

1939

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA : 13-CR-607 (JFB)

-against- : U.S. Courthouse

: Central Islip, New York

PHILLIP A. KENNER  
a/k/a "Philip A. Kenner",  
and :  
TOMMY C. CONSTANTINE  
a/k/a "Tommy C. Hormovitis"

Defendants : May 28, 2015

- - - - - X 9:30 a.m.

BEFORE:

HONORABLE JOSEPH F. BIANCO  
United States District Judge  
and a jury

APPEARANCES:

For the Government: KELLY T. CURRIE  
Acting United States Attorney  
Federal Plaza  
Central Islip, New York 11722  
BY: JAMES M. MISKIEWICZ  
SARITHA KOMATIREDDY  
Assistant U.S. Attorneys

For the Defendant: HALEY, WEINBLATT & CALCAGNI LLP  
Phillip A. Kenner One Suffolk Square  
1601 Veterans Memorial Highway  
Suite 425  
Islandia, New York 11749  
BY: RICHARD HALEY

1940

1 For the Defendant: LaRUSSO & CONWAY LLP  
Tommy C. Constantine 300 Old Country Road  
2 Suite 341  
Mineola, New York 11501  
3 BY: ROBERT P. LaRUSSO  
and  
4 ANDREW L. OLIVERAS  
26 Strangford Court  
5 Oceanside, New York 11572  
6

7 Court Reporter(s) OWEN WICKER  
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100 Federal Plaza  
9 Central Islip, New York 11722  
631-712-6102  
10

11 \* \* \*

1941

M O R N I N G   S E S S I O N

(Case called)

(Appearances noted.)

THE COURT: All right. We had one juror that was late but they are all here. Do you want me to wait for Mr. Miskiewicz?

MS. KOMATIREDDY: I believe he's here.

MR. LARUSSO: Your Honor, while the jury was being brought in, I told you about my schedule last evening. I got a red-eye flight so I will be in on Sunday.

THE COURT: Very good. Thank you very much.

**T Y S O N   N A S H,**

having been previously sworn, resumed the stand and testified further as follows:

(Whereupon, the jury at this time enters the courtroom.)

THE COURT: Be seated. Good morning, members of the jury. Good to see everybody again this morning. As you recalled when we ended yesterday Mr. Nash was on cross-examination. We'll continue from that point.

Mr. Nash, I remind you he had he had.

DIRECT EXAMINATION (Cont'd)

BY MS. KOMATIREDDY:

**Nash - Direct/Komatireddy**

1942

1 Q You were talking about documentation you received  
2 from Mr. Constantine regarding Eufora, do you remember  
3 that?

4 A Yes.

5 Q And I believe you testified that you had gone by the  
6 offices several times and spoken with Mr. Constantine  
7 about documentation; is that right?

8 A Yes.

9 Q I'm going to hand you what has been marked as  
10 Government's Exhibit 764. Do you recognize that?

11 A Yes, I do.

12 Q What is it?

13 A It's a transfer of membership, I believe, from  
14 Constantine Management Group into Eufora LLC.

15 Q When did you get this document?

16 A I got it in 2012, I believe.

17 Q And who did you get it from?

18 A I got it from Tommy.

19 Q Is this a true and accurate copy of the document  
20 received from Mr. Constantine in 2012?

21 A Yes, it is.

22 MS. KOMATIREDDY: The Government moves 764 in  
23 evidence.

24 MR. LARUSSO: No objection, your Honor.

25 MR. HALEY: No objection, Your Honor.

**Nash - Direct/Komatireddy**

1943

1 THE COURT: Government's Exhibit 764 is  
2 admitted.

3 (Whereupon, Government Exhibit 764 was received  
4 in evidence.)

5 Q Look at 764 and what is in evidence as 760. Looking  
6 at 764 on the right side there, there is a transfer of  
7 membership interest of Eufora LLC. Is that  
8 Mr. Constantine's signature on the bottom?

9 A Yes, it is.

10 Q And it says: Constantine Management Group hereby  
11 transfers and conveys to Tyson S and Cathleen J the  
12 undersigned Constantine Management Group LTD for valuable  
13 consideration the receipt of which is hereby acknowledged,  
14 hereby transfers and conveys to Tyson S and Cathleen Nash  
15 Living Trust .5 percent of transferors right, title and  
16 interest in Eufora LLC, an Arizona limited liability  
17 company to.

18 Dated this 24th day of April, 2008.

19 Now, Mr. Nash you testified that you received  
20 this document in 2012, right?

21 A Yeah, I don't know -- I'm pretty sure it was 2012,  
22 yes.

23 Q So who wrote in 24th day of April, 2008?

24 A Tommy.

25 Q And going back to Government's Exhibit 760, this was

Nash - Direct/Komatireddy

1944

1 the wire transfer of the Eufora investment we went over  
2 yesterday, do you remember?

3 A Yes, that is.

4 Q That is also dated April 24, 2008?

5 A Correct.

6 Q Now, let me just step back for a minute. When we  
7 talked about your participation in the GSF, you testified  
8 that the defendant told you that you would get an extra  
9 share in Eufora for participating in GSF and that share  
10 would come from buying out the so-called bad apples, is  
11 that fair?

12 A Yes.

13 Q And that was Juneau, Nolan and Moreau?

14 A Yes.

15 Q Back in 2008, when you first invested in Eufora, did  
16 the defendant say anything about your money being used to  
17 buy out other peoples' shares in Eufora?

18 MR. LARUSSO: Your Honor, I object to the form  
19 of the question.

20 THE COURT: Overruled.

21 Q You may answer.

22 A No, I didn't. Again I was under the understanding  
23 that that money was going to be used for some upcoming  
24 commercials to finish off. I was lucky enough to get  
25 involved when I did. I came in very late to Eufora.

**Nash - Cross/Haley**

1945

1 Q Did they say anything about your money being used to  
2 buy out Constantine's share of the company?

3 A No.

4 Q Would that have been important for you to know in  
5 deciding whether to give money to Eufora?

6 A Considering the guy running Eufora, I would have been  
7 quite concerned he's getting out and I'm getting in, yes.

8 MS. KOMATIREDDY: No further questions.

9 THE COURT: Mr. Haley.

10 Cross-examination.

11 CROSS-EXAMINATION

12 BY MR. HALEY:

13 Q We haven't met, Mr. Nash. I'm Rick Haley and I  
14 represent Mr. Kenner.

15 A How are you, sir?

16 Q Kindly take a look at this document marked Kenner  
17 Exhibit 50 for identification. Is it fair to state, sir,  
18 that particular document, Kenner Exhibit 50 for  
19 identification is simply a larger copy of the photocopy of  
20 Exhibit 764?

21 A Yes, it is.

22 Q Now, with that document in hand, we can agree, can we  
23 not, sir, that at least by virtue of the precise language  
24 of that document, what was being conveyed to you was a  
25 percentage of an ownership interest held by the transferor

**Nash - Cross/Haley**

1946

1 in this case Tommy Constantine, correct?

2 A The Constantine Management Group is my understanding,  
3 yes.

4 Q Well, did you have an understanding that Tommy  
5 Constantine at the point in time that you invested in  
6 Eufora was an owner of the company or had an ownership  
7 interest in the company?

8 A Yes.

9 THE COURT: When you say "the company,"  
10 Constantine Management or Eufora?

11 MR. HALEY: Eufora. Thank you, your Honor.

12 Q So, when you received this document, sir, by virtue  
13 of its terms, you were acquiring then once again a  
14 percentage of the ownership interest held by Tommy  
15 Constantine in Eufora, correct?

16 A When you say Tommy, I'm guessing Tommy and the  
17 Constantine Management Group are two different things.

18 When I originally put my money into Eufora, I  
19 was guessing it was going into Eufora. When I later  
20 noticed it went into Constantine Management Group, this is  
21 why the document was made up, that I was going to own my  
22 shares now in Eufora instead of just the Constantine  
23 Management Group. That's why this document was done in  
24 2012 and backdated to 2008.

25 Q Well, sir, when you received this document, what if



**Nash - Cross/Haley**

1947

1 any discussions did you have with Tommy Constantine as to  
2 the reason that the document said Constantine Management  
3 Group as opposed to let's say Eufora. What did you say to  
4 him and what did he say to you?

5 A I didn't really understand the whole thing at the  
6 start. I gave money to where Phil told me to send the  
7 money. When I saw Constantine Management Group, I still  
8 really didn't understand that that wasn't Eufora or maybe  
9 it was, I don't really know, but it definitely wasn't to  
10 Tommy Constantine, if that's what you are asking.

11 Q Sir, you testified just a moment ago and you  
12 testified on direct that -- these are your words:  
13 Guessing about what was being done with your \$100,000  
14 payment with respect to Eufora.

15 My question is simply this, sir: The  
16 discussions you had with Phil Kenner as relates to  
17 obtaining an ownership interest in Eufora in return for  
18 your \$100,000, could you give us a time frame? When did  
19 that discussion take place?

20 A I believe I invested in Eufora, and my conversation  
21 with Phil Kenner was just before the money was wired back  
22 in April of 2008.

23 Q All right. And where did that conversation take  
24 place?

25 A Over the phone. I was sitting in my car in my

**Nash - Cross/Haley**

1948

1 driveway.

2 Q Did you now, being seven years ago -- sorry -- seven  
3 years ago, as you were seated in your car in this  
4 telephone conversation you had with Phil, take notes,  
5 written notes, in terms of what Phil was saying to you.  
6 Yes or no?

7 A No, I didn't take any notes.

8 Q Sir, we can agree, can we not, that there's no  
9 question with reference to the conversation you had with  
10 Phil Kenner that the substance of it involved you making  
11 payment of \$100,000 in order to acquire a percentage of an  
12 ownership interest in the company called Eufora. We can  
13 agree with that; is that correct?

14 A Yes.

15 Q You said on direct, these are your words: And I was  
16 guessing that the money was going to be used for an  
17 advertising campaign.

18 Do you remember that testimony?

19 A For Eufora, correct. Those were also my words.

20 Q I understand that, sir.

21 Without guessing, sir, as to what was said, can  
22 you state here today under oath, not what you assume and  
23 what you guessed, but that Phil Kenner said to you  
24 specifically during the course of that conversation, by  
25 the way, in sum and substance, these monies are going to

**Nash - Cross/Haley**

1949

1 be used for an advertising campaign for Eufora. Can you  
2 say that today under oath, because these words are  
3 critically important, sir.

4 What is your testimony in that regard?

5 A Yes, the exact conversation I had with Phil. Again,  
6 I was excited to getting involved in Eufora. My money was  
7 going to be used to help pay for commercials that later  
8 Tommy Constantine showed me at his office that were  
9 eventually made.

10 Q How many times were you interviewed by the FBI in  
11 connection with this -- before your testimony here today?

12 A A number of times.

13 Q Give me some idea. One, two, three, four, five?

14 A Probably seven or eight times.

15 Q How many of those interviews were conducted  
16 telephonically?

17 A A majority of them.

18 Q How many of those interviews were conducted in  
19 person?

20 A One or two.

21 Q When was the last time you were interviewed by the  
22 FBI or members of the U.S. Attorney's Office in person?

23 A I believe back in March.

24 Q Of what year?

25 A This year.

**Nash - Cross/Haley**

1950

1 Q Where did that interview take place?

2 A That took place here in New York.

3 Q In this very building --

4 A In this building, yes.

5 Q Who was present during that interview?

6 A The lawyer, Matt Galimoto and Josh.

7 Q Do you know which lawyer?

8 A (Indicating). The person I've been speaking with.

9 Q That would be Assistant United States Attorney Ms.  
10 Komatireddy?

11 A Yes.

12 Q During the course of that interview, again you were  
13 asked questions and you answered the questions, true?

14 A True.

15 Q When you were asked those questions and you answered  
16 the questions, did you observe one or more of the persons  
17 taking notes?

18 A I don't recall.

19 Q Well, prior to that point in time there was another  
20 point in time you were interviewed in person by the agents  
21 or the Assistant United States Attorneys; is that correct?

22 A I believe so. Most of them were done over the phone  
23 and they had mentioned that some of the calls were  
24 recorded and if I minded if someone was listening in.

25 Q And you certainly said you had no objections to them

**Nash - Cross/Haley**

1951

1 listening in?

2 A No issue.

3 Q To the best of your memory, they advised you they  
4 were either recording or taking notes?

5 A Not on all occasions but most of them, yes.

6 MS. KOMATIREDDY: Objection. Your Honor, there  
7 is no basis to show the document.

8 THE COURT: Why don't you approach.

9 MR. HALEY: Sure.

10 (Whereupon, at this time the following took  
11 place at the sidebar.)

12 (Continued.)

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**Nash - Cross/Haley**

1952

1 THE COURT: You can ask him whether or not he  
2 talked about the advertising. If he says I don't remember  
3 then you can show him the notes.

4 MR. HALEY: Okay. I'll do it a little different  
5 way but I'll follow your Honor's protocol.

6 MS. KOMATIREDDY: Your Honor, this is not  
7 contrary here.

8 MR. HALEY: Let me do it your way.

9 THE COURT: As long as it is consistent with the  
10 rules of evidence.

11 (End of sidebar conference.)

12 (Continued.)

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**Nash - Cross/Haley**

1953

1 (In open court.)

2 Q Sir, following the conversation you had with Phil  
3 Kenner as you sat in your car -- by the way you were on  
4 your cell phone; is that correct?

5 A Correct.

6 Q Was there any further conversation between yourself  
7 and Phil Kenner with reference to the \$100,000 that you  
8 paid for purposes of acquiring ownership interest in  
9 Eufora before you received the 2012 document marked and  
10 dated 2008?

11 A I had very few conversations with Phil about Eufora.  
12 It was Tommy's baby and Tommy was local. We might have  
13 talked about it on a few different occasions but nothing  
14 in great detail. It was always Tommy I went to about  
15 Eufora.

16 Q Well, during the the course of the conversations you  
17 had with Tommy and/or Phil, did you make inquiry as to how  
18 the advertising campaign was going. Yes or no?

19 A Yeah.

20 Q Who did you make that inquiry of?

21 A Tommy, I believe. As I stated I went to the office  
22 and he was deciding to show me the commercials that were  
23 done.

24 Q And as it relates to those commercials, were you  
25 impressed with the commercials?

**Nash - Cross/Haley**

1954

1 A I thought they were funny. I thought they were good.

2 Q Did you see those commercials before you were  
3 interviewed telephonically by the FBI?

4 A Yes, I saw these commercials early on.

5 Q Sir, when you saw these commercials, did you say in  
6 sum and substance to Tommy Constantine, words to the  
7 effect, oh, these are the commercials I paid for. Did you  
8 say that, yes or no?

9 A No.

10 Q With respect to the discussions you had concerning  
11 the prospective legal actions to be brought against Ken  
12 Jowdy, I believe you testified on direct indeed there were  
13 discussions between yourself and Phil Kenner, perhaps  
14 Tommy Constantine as well, as relates to lawsuits to be  
15 brought against Ken Jowdy, true?

16 A Excuse me, losses?

17 Q Lawsuits.

18 A Lawsuits, yes.

19 Q And it's fair to state that the discussion spoke in  
20 terms of a plural, lawsuits, as opposed to a lawsuit in  
21 particular, correct?

22 A There was a lot of moving parts, some of which I  
23 didn't understand. I didn't know about lawsuits. I  
24 thought there was a major lawsuit.

25 Q With reference to the discussions that you had



**Nash - Cross/Haley**

1955

1 concerning disputes with reference to Phil Kenner LLCs and  
2 Ken Jowdy, is it not fair and is it not true -- excuse me.  
3 Is it not true that one of the lawsuits/lawsuit that was  
4 mentioned involved recovering loans made to Ken Jowdy from  
5 Little Isle IV, the company that you were an investor in  
6 Ula Makika? That's true, correct?

7 A Yes.

8 Q And at that point in time, when you became aware of  
9 this issue regarding moneys loaned by Little Isle IV to  
10 Ken Jowdy and his refusal to repay, did you object to a  
11 lawsuit being filed for purposes of recovering those  
12 monies? Yes or no?

13 A Again, there was a lot of moving parts. I can't say  
14 yes or no to that. I trusted Phil Kenner. He was  
15 fighting on our behalf. He was doing a great job from my  
16 understanding. He talked to us anytime I had a question.  
17 Anytime I had an issue, I would pick up the phone, he'd  
18 answer, and he would tell me what was going on.

19 Again I didn't know the other side of it. I  
20 just new Phil's side and it always seemed to put me at  
21 ease, and I understand for the most part it was very  
22 complex. That's all I can say. But it seemed like he was  
23 doing a good job.

24 Q You certainly would have no objection I take it, sir,  
25 should there be a lawsuit against Ken Jowdy wherein 5

**Nash - Cross/Haley**

1956

1 million dollars plus interest is recovered for the benefit  
2 of Little Isle IV, you would certainly have no objection  
3 in terms of --

4 MS. KOMATIREDDY: Objection to form and  
5 argumentative --

6 Q -- That lawsuit succeeding, would you?

7 THE COURT: Overruled. You can answer.

8 A No.

9 Q Well, when this discussion about the lawsuit  
10 involving the recovery of the money loaned to Ken Jowdy  
11 with all the other moving parts was discussed as you told  
12 us a moment ago, did you say in sum and substance, Gee,  
13 Phil, you never told me about this loan from Little Isle  
14 IV to Ken Jowdy, I have no knowledge of it, and what is  
15 this all about. Did you say something to Phil about that  
16 at that point in time?

17 Yes or no?

18 A I heard it much later after I think after it  
19 happened. Again Phil talked to me about it in great  
20 detail. It is a little foggy at this point but there was  
21 a definite issue there. I think that's how this whole  
22 thing started with the original lawsuit with Diamonte.

23 Q And though I believe you testified on direct that you  
24 were unaware of money being loaned from Little Isle IV to  
25 Ken Jowdy when the loan was made, we now can agree there

**Nash - Cross/Haley**

1957

1 did come a point in time that you learned of such loans  
2 with Phil Kenner?

3 A There came a point in time much later. Again I gave  
4 my money to Diamonte to whatever account Phil told me to  
5 send it to. After that I have no idea.

6 Q I'm not talking about the money to Diamonte. What  
7 I'm really focused on based on my prior question and your  
8 answer to the question, is the money loaned to Little Isle  
9 IV to Ken Jowdy.

10 I guess from your perspective buying it is going  
11 to Diamonte Cabo San Lucas, it's the same issue?

12 A There's a definite issue there with Ken Jowdy  
13 according to what Phil told me.

14 Q Did you understand, sir, when Little Isle IV was  
15 formed as an LLC, Limited Liability Corp., that Phil  
16 Kenner would be the managing member. Do you have that  
17 understanding?

18 A Yes.

19 Q And when you first had discussions with Phil Kenner  
20 in connection with the formation of Little Isle IV LLC,  
21 you certainly had the idea, the understanding that the  
22 idea was to obtain investors, yourself included, for  
23 purposes of investing in primarily real estate in Hawaii,  
24 is that true?

25 A A piece of real estate, yes.

**Nash - Cross/Haley**

1958

1 Q And I believe you testified on direct that Phil had a  
2 number of documents or information to share with you as  
3 relates to the Hawaii land development investment, true?

4 A That we got after, much later after the investment  
5 was made.

6 Q And can you give us some idea? Was it a couple of  
7 pages, was it a significant amount money? How can you  
8 characterize what you received from Phil Kenner?

9 A I believe it is a lot. I believe it was a good chunk  
10 of documentation, documentation that I didn't really read  
11 over. We saw one of the documents yesterday. I received  
12 that much later after the investment was made and after I  
13 received that \$42,500.

14 Q The documents you received from Phil could have been  
15 as much as seven inches in depth?

16 A I can't say for sure. It was definitely thick.

17 Q Sir, of your own personal knowledge, the  
18 establishment of Little Isle IV and the land development  
19 project itself in Hawaii, that was legitimate, was it not?

20 In other words, there were truly efforts made  
21 based upon your contribution, efforts made by Phil Kenner,  
22 to develop and invest in land in Hawaii. That's true, is  
23 it not?

24 A Yes.

25 Q So you weren't defrauded when it comes to Phil Kenner

**Nash - Cross/Haley**

1959

1 requesting that you contribute to Little Isle IV and that  
2 being a scam, were you?

3 MS. KOMATIREDDY: Objection.

4 THE COURT: Sustained.

5 Q As you sit here today, would you be pleased to know  
6 that your ownership interest in Eufora is reflected on its  
7 books and records?

8 A You mean that there's books and records?

9 Q That shows your ownership interest, meaning that  
10 there's books and records, sir, maintained by Eufora that  
11 show your ownership interest in the company?

12 A Yes.

13 Q You would be pleased to hear that?

14 A I would be pleased to hear that, yes.

15 Q Do you have an understanding if this privately held  
16 company should be sold publicly, your percentage interest  
17 in Eufora may result in a significant financial recovery?

18 A That's what kept me going through all this, yes.

19 Q Sir, I want you to take a look at a document marked  
20 Kenner Exhibit 52, and you are entitled to see the entire  
21 document, but I'll refer your attention at least to the  
22 last page.

23 Do you recognize your signature on that  
24 document, sir?

25 A Yes, I do.

**Nash - Cross/Haley**

1960

1 Q And where does it appear?

2 A On the last page.

3 MR. HALEY: Thank you, sir.

4 Your Honor, I believe by stipulation of counsel  
5 we'd offer that as Kenner Exhibit 52.

6 MR. LARUSSO: I have no objection, Judge. I  
7 know what the document is.

8 MS. KOMATIREDDY: Sorry. No objection.

9 THE COURT: Exhibit 52 is admitted.

10 (Whereupon, Defendant's Exhibit 52 was received  
11 in evidence.)

12 MR. HALEY: Thank you.

13 Q Sir, I'm also going to ask you to look what is marked  
14 as Kenner Exhibit 1, a document in evidence, and indeed  
15 you are entitled to look at the entire document, but I'm  
16 going to refer your attention to the page marked with a  
17 green -- yellow sticker.

18 A I recognize it, yes.

19 Q And does your signature appear on that document, sir?

20 A Yes, it does.

21 Q Now, I understand this is a copy of a document, is  
22 that true?

23 A Yes.

24 Q Even though it is an a copy, you are still able to  
25 recognize your signature, correct?

**Nash - Cross/Haley**

1961

1 A Yes.

2 THE COURT: Are you offering that, Mr. Haley?

3 MR. HALEY: I'm sorry?

4 THE COURT: Are you offering that?

5 MR. HALEY: Sir, it's already in evidence. I  
6 apologize.

7 THE COURT: Okay.

8 Q Now, Mr. Nash, you testified on direct that before  
9 you engaged Phil Kenner for his services you had another  
10 financial advisor by the name of Mr. McRae, correct?

11 A Correct.

12 Q And after you decided to move from Mr. McRae to Phil  
13 Kenner, he made various proposals to you in relation to  
14 creating an investment portfolio; is that correct?

15 A Yes, he did.

16 Q And I believe you testified because you guys shared a  
17 common passion for a great sport hockey, there was a  
18 natural connection between the two of you; is that  
19 correct?

20 A Yes, there was.

21 Q And that developed a trust between the two of you, is  
22 that true?

23 A Very much so.

24 Q Has anyone told you, sir, as you sit here today, that  
25 you should no longer trust Phil Kenner? Yes or no?

**Nash - Cross/Haley**

1962

1 A Lots of people, yeah.

2 Q Anyone associated with the federal government tell  
3 you that? Yes or no?

4 MS. KOMATIREDDY: Objection.

5 MR. HALEY: Well, I withdraw the question.

6 Q Are you friendly with Brian Berard?

7 A No.

8 Q What other hockey players at least involved in this  
9 litigation do you have some sort of relationship with?

10 A I don't exactly know who is all involved. A couple,  
11 I would say for sure, two or three. Personal  
12 relationship.

13 Q Other than what you say people told you, have you  
14 ever been in an instance where to your own personal  
15 knowledge, Phil Kenner lied to you? Yes or no?

16 A My own personal experience?

17 Q Yes.

18 A Yes.

19 Q As relates to that point, did you discuss this  
20 particular issue with Phil Kenner either in person or over  
21 the phone. Yes or no?

22 A Yes, I did.

23 Q I take it you were dissatisfied with his answer? Yes  
24 or no?

25 A Yes.



**Nash - Cross/Haley**

1963

1 Q You testified on direct that you were happy with the  
2 portfolio presented to you by Phil; is that correct?

3 A Yes.

4 Q And I believe you testified on direct that that  
5 specific portfolio was still working today, true?

6 A Yes.

7 Q Meaning it is returning at least an investment that  
8 you are satisfied with, isn't that true?

9 A Yes.

10 Q We know, sir, that the document that was signed by  
11 Phil authorizing transfer of moneys to both the Hawaii  
12 land development as well as Eufora was done pursuant to a  
13 power of attorney, correct?

14 A Yes, there was.

15 Q And I believe you testified just so the record is  
16 clear, that Phil did have the authority pursuant to the  
17 power of attorney you read to him to make those transfers  
18 on your behalf, isn't that true?

19 A I believe so.

20 Q Sir, I do just need to return briefly to a topic that  
21 I did cover a moment ago, but in your direct examination  
22 when you were asked specifically about the conversation  
23 that you had with Phil concerning Eufora investment, we  
24 know it took place in your car while you were on the  
25 telephone, but I believe your answer was, again, we didn't

**Nash - Cross/Haley**

1964

1 talk a great deal about it. I was guessing it would be  
2 used for commercials?

3 MS. KOMATIREDDY: Objection. Misstates the  
4 record.

5 MR. HALEY: I'll withdraw the question.

6 Q Well, did you say that you were excited about  
7 obtaining an interest in Eufora because I was getting a  
8 piece of a great company?

9 A Yes. I wasn't just buying a commercial, I was buying  
10 a piece of Eufora. What he mentioned was that they needed  
11 to produce commercials and that's what my money was going  
12 to go to.

13 Q But your primary interest, I take it, was in  
14 acquiring the interest of Eufora as a great company and  
15 the commercial aspect was important but secondary to you,  
16 correct?

17 MS. KOMATIREDDY: Objection to form,  
18 argumentative and asked and answered.

19 THE COURT: You can answer that.

20 A I didn't really pay particularly close attention to  
21 what the money was going to be used for, I was wanting a  
22 piece of Eufora that he told me numerous times prior to  
23 that, it was a big company, there was a valuation of it I  
24 believe at the time of a lot of money, and I was getting  
25 in late and all he told me was that, yeah, it was going to

**Nash - Cross/Haley**

1965

1 be used primarily for commercials, but I was buying a  
2 piece of Eufora not a commercial.

3 Q And that's what was important to you, was it not,  
4 that you were getting a piece of Eufora? Yes or no?

5 A Yes.

6 MR. HALEY: Thank you.

7 Q Now I know you testified on direct that your memory  
8 of the conversation with Phil Kenner in connection with  
9 the scope and use of GSF funds, did involve discussions  
10 about a lawsuit concerning himself and a person by the  
11 name of Kristin Myra (ph), correct?

12 A Correct.

13 Q Mr. Nash, you recently settled a lawsuit involving a  
14 claim --

15 MS. KOMATIREDDY: Objection. Already litigated  
16 this, your Honor.

17 THE COURT: Why don't you approach the bench.

18 (Whereupon, at this time the following took  
19 place at the sidebar.)

20 (Continued.)

21

22

23

24

25

**Nash - Cross/Haley**

1966

1 THE COURT: Where are you going to?

2 MR. HALEY: It's not my intention to go into the  
3 claims made in the lawsuit as relates to alleged claims by  
4 this individual concerning payments owed to him by John  
5 Kaiser, wherein John Kaiser claimed that his signature was  
6 forged on the document. That's not my intention to do  
7 that. My intention as indicated on the record yesterday,  
8 it is very focused, simply to ask him whether there came a  
9 point in time he settled a lawsuit with John Kaiser.  
10 That's all I wish to ask him with reference to this  
11 particular question.

12 As an offer of proof, Judge, the follow-up  
13 question will be prior to settling the lawsuit with John  
14 Kaiser, did you have communications with Special Agent  
15 Matt Galioto of the Federal Bureau of Investigation  
16 wherein he attempted to persuade to you drop the lawsuit  
17 against John Kaiser and in turn sue Phil Kenner in place.  
18 And I believe, your Honor, that line of inquiry, I don't  
19 know what it will lead to, but that line of inquiry is  
20 relative and material to the defense of this action  
21 wherein we claim consistently that there has been improper  
22 --

23 MS. KOMATIREDDY: -- Settlement is not relevant.

24 THE COURT: He's not going into the details of  
25 the settlement.

**Nash - Cross/Haley**

1967

1 MS. KOMATIREDDY: The fact of settlement is not  
2 relevant. It's an attempt to impeach Mr. Kaiser. The  
3 second question is fine, but the first question is not  
4 relevant and raises the possibility that Mr. Kaiser  
5 settled because he did something improper.

6 THE COURT: What is the basis of that?

7 MR. HALEY: If I may, and perhaps it is  
8 unnecessary, it is already in the record. When John  
9 Kaiser testified, he was asked did there come a point in  
10 time he settled the lawsuit with -- actually specifically  
11 said Sydor, no, I did not, then realized it was Nash, yes,  
12 I did settle with Tyson Nash. I believe it is in the  
13 record that the settlement in particular was mentioned.  
14 So that's in the record as far as that was concerned.

15 THE COURT: I don't want you to mention it  
16 again. But what you proffer to him, all right.

17 MR. HALEY: Very well.

18 (End of sidebar conference.)

19 (Continued.)  
20  
21  
22  
23  
24  
25

**Nash - Cross/Haley**

1968

1 (In open court.)

2 MR. HALEY: Thank you, Judge.

3 Q Mr. Nash, I believe you testified a short while ago  
4 there has been any number of discussions that you had with  
5 Special Agent Matt Galimoto, is that true?

6 A Correct.

7 Q Do you recall approximately the last time you had a  
8 conversation with Agent Matt Galimoto?

9 A In reference to what? I talked to him this morning.

10 Q Obviously.

11 Prior to talking to him this morning, when was  
12 the last time you talked to him, either telephonically or  
13 in person?

14 A Last night.

15 Q And prior to that, sir?

16 A Yesterday morning.

17 Q There came a point in time, sir, that a dispute  
18 between yourself and John Kaiser was resolved, is that  
19 true?

20 A There was a time, yes.

21 Q Prior to resolving that dispute between yourself and  
22 John Kaiser, did you have a conversation with Special  
23 Agent Galimoto, yes or no?

24 A Yes.

25 Q And during the course of that conversation, did the

**Nash - Cross/Haley**

1969

1 topic of your dispute with John Kaiser come up? Yes or  
2 no?

3 A Yes.

4 Q And in substance, sir, during the course of that  
5 conversation, did Special Agent Galioto of the FBI suggest  
6 to you that you discontinue the dispute with John Kaiser  
7 and in turn commence a lawsuit against Phil Kenner? In  
8 substance did that happen?

9 A No.

10 Q Well, when you discussed the dispute involving John  
11 Kaiser with Agent Galioto, when and where did that occur?

12 A Over the phone numerous times.

13 Q Was the particulars of the dispute between yourself  
14 and John Kaiser discussed between the two of you? Yes or  
15 no?

16 A Yes, mainly by me.

17 Q Who initiated that call?

18 Did you or he?

19 A He initiated the call. At the end of the  
20 conversation we briefly touched on the Kaiser issue, yes.

21 Q During the course of that call, did you discuss the  
22 Global Settlement Fund? Yes or no?

23 A Yes.

24 Q During the course of the call did you discuss Eufora?  
25 Yes or no?

Nash - Cross/Haley

1970

1 A Yes.

2 Q Are we talking about a specific call?

3 Q No, we're talking about that call, sir, before the  
4 dispute with Mr. Kaiser that was resolved.

5 A Okay, yes.

6 Q Was that discussion that you had with Special Agent  
7 Galioto, before the dispute with Mr. Kaiser was resolved,  
8 did that occur before or after your testimony in  
9 connection with that Arizona lawsuit? Yes or no?

10 A We had conversations before and after, yes?

11 Q During the course of that conversation did you  
12 discuss your testimony as relates to that Arizona lawsuit  
13 concerning the dispute with John Kaiser? Yes or no?

14 A Yes.

15 Q During the course of that testimony in the Arizona  
16 lawsuit -- sorry. Are you talking about my deposition or  
17 my testimony?

18 MR. HALEY: I'm talking about your deposition,  
19 sir.

20 THE WITNESS: Okay.

21 MR. HALEY: I'll back up a little bit, sir.

22 There's no question, sir, that before you  
23 committed money to the Global Settlement Fund, you had  
24 discussions with Phil Kenner about how that money was to  
25 be put to use, correct?



**Nash - Cross/Haley**

1971

1 A I did briefly when they sat in my living room but it  
2 was mainly Tommy who took control of that conversation.

3 Q But Phil Kenner was present part of that  
4 conversation, isn't that true?

5 A Yes, he was.

6 Q Now, in the course of that deposition, were you asked  
7 a question about whether or not you spoke with Phil Kenner  
8 about the Global Settlement Fund?

9 MS. KOMATIREDDY: Objection. Improper  
10 impeachment.

11 THE COURT: You can answer, if you know.

12 THE WITNESS: Say the question again, please.

13 Q Sure. During the course of the deposition in the  
14 Arizona lawsuit, were you asked a question about whether  
15 you spoke to Phil Kenner about the Global Settlement Fund?

16 A I don't recall.

17 Q Sir, kindly take a look at the document marked Kenner  
18 43 for identification.

19 A Yes.

20 Q Do you recognize that document?

21 A I've never seen it in this form but this is my  
22 deposition.

23 Q Would you kindly take a look at page 12, sir, and  
24 lines 8 through 10, and just read it to yourself.

25 A Okay.

**Nash - Cross/Haley**

1972

1 Q Does that refresh your recollection as to whether or  
2 not you were asked a question about whether you spoke with  
3 Phil Kenner about the Global Settlement Fund?

4 A Yes. It says no, but it was the context in which  
5 this was asked that you are missing.

6 Q Sir, I didn't ask the question yet.

7 A Okay.

8 Q My question is: Does that refresh your recollection  
9 about whether or not you were asked a question about the  
10 Global Settlement Fund, does it refresh your recollection?

11 A Yes.

12 Q Now, we can agree, sir, that at least as far as that  
13 question is concerned:

14 Question: Did you talk with Phil Kenner about  
15 this Global Settlement Fun?

16 Answer: No. "

17 Is that correct?

18 MS. KOMATIREDDY: Objection, leading.

19 THE COURT: If the Government has the larger  
20 portion of the transcript, they can read it into the  
21 record or they can ask him to explain that.

22 Q We can agree it says that?

23 A Yes, it says that.

24 Can I explain the answer?

25 Q You know, actually yes, explain the answer, sir.

## Nash - Cross/Haley

1973

1 A Okay. Thank you.

2 The context in which this question was asked was  
3 the after conversation about the Global Settlement Fund,  
4 not whether I ever talked to Phil Kenner about the Global  
5 Settlement Fund. My obvious answer would be yes, I did  
6 talk to Phil Kenner about the Global Settlement Fund as I  
7 stated under oath in my own words in my living room, but I  
8 didn't talk to Phil Kenner after the money was given to  
9 the Global Settlement Fund. It was just given and I don't  
10 recall -- I didn't pay attention to it after. I was  
11 guessing it was being used for whatever he said it was  
12 going to be used for and Tommy said it was going to be  
13 used for.

14 Q So when you answered that question, you were  
15 referring to the point in time after you received the  
16 complete list of how the Global Settlement Funds were  
17 disbursed from Phil Kenner, is that the point in time in  
18 your mind you were thinking of?

19 A Sorry. Ask me again.

20 Q Sure.

21 We know on your direct testimony there came a  
22 point in time when Phil Kenner gave you a very detailed  
23 list in evidence as to what had occurred in reference to  
24 moneys contributed to the Global Settlement Fund?

25 MS. KOMATIREDDY: Wrong witness. That was

**Nash - Cross/Haley**

1974

1 Mr. McKee's testimony.

2 Q Did there come a point in time, sir, that you  
3 requested of Phil Kenner a list of the disbursements  
4 coming out of the Global Defense Fund?

5 THE COURT: Global Settlement Fund.

6 MR. HALEY: Yes.

7 A I believe I had a conversation. I don't recall ever  
8 actually sitting down with Phil. I remember sitting down  
9 with Tommy about the disbursements of the Global  
10 Settlement Fund in great detail, but I don't really recall  
11 talking to Phil about it.

12 Q When you say you don't recall, so it may or may not  
13 have occurred in terms of the conversation you had with  
14 Phil about the disbursements in the Global Settlement  
15 Fund?

16 A It may or may not have happened.

17 Q Sir, I'm going to ask you to take a look at a  
18 document marked Government's Exhibit 767 in evidence.  
19 Just take a look at that.

20 A Okay.

21 Q Does that appear to be a document reflecting  
22 disbursements out of the Global Settlement Fund?

23 A It could be. There was no title on that. I don't  
24 know whose bank account this is.

25 Q Well, we can agree, sir, at least as far as this

**Nash - Cross/Haley**

1975

1 document is concerned, for example, you see the sum of  
2 \$25,000. It says Myra (ph) case. Do you see that?

3 A Yes.

4 Q And would that have some meaning to you in connection  
5 with the Global Settlement Fund?

6 A Yes, it would.

7 Q Do you know, sir, to the best of your memory, whether  
8 or not you ever requested a document of this nature from  
9 Phil Kenner?

10 A I believe I did and seeing that now I believe I went  
11 through it with Phil at some point, yes.

12 (Continued.)

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**Nash - Cross/Mr. Haley**

1976

1 CROSS-EXAMINATION (Continued)

2 BY MR. HALEY:

3 Q. And to the best of your belief and memory, when and  
4 where did that meeting take place? We went through it  
5 with Phil. His place? Your place? The best of your  
6 memory.

7 A. I believe that took place at AJ's Grocery Store.

8 Q. Where is AJ's Grocery store, sir?

9 A. It is in Scottsdale.

10 Q. Okay. When you went over with Phil Kenner,  
11 Government Exhibit 767 -- I very seldom use this, so let  
12 me give it a try.

13 When you went over this very detailed document  
14 in connection with those numbers with Phil Kenner, did he  
15 answer any and all questions you might have about those  
16 disbursements? Yes or no?

17 A. Yes.

18 Q. And I take it after that -- withdrawn.

19 I take it after that meeting with Phil Kenner  
20 where you discussed the disbursements on that document and  
21 he gave you answers, after that there was no further  
22 discussion between you and he with reference to the Global  
23 Settlement Fund.

24 Is that your testimony?

25 A. Correct. I had no issue.

Nash - Cross/Mr. Haley

1977

1 Q. So earlier when I asked:

2 *"Did you talk with Phil Kenner about this Global*  
3 *Settlement Fund?"*

4 *"Answer: No,"* in your disposition, you were  
5 referring to the point in time after you received this  
6 document. Is that what your testimony is?

7 A. Correct.

8 You've got to remember this --

9 Q. Sir, you have answered the question.

10 Can I have a moment, Judge?

11 (There was a pause in the proceedings.)

12 BY MR. HALEY:

13 Q. Mr. Nash, of your own -- withdrawn.

14 Mr. Nash, are you aware of the current value of  
15 the loan to Ken Jowdy from Little Isle IV in connection  
16 with the principal amount with accumulated interest?

17 MS. KOMATIREDDY: Objection. Assumes facts not  
18 in evidence.

19 THE COURT: The question is, is he aware.  
20 Again, all these questions are not in evidence. If he  
21 knows the answer, he can answer it.

22 A. I believe 6 million was a number that rings a bell.

23 BY MR. HALEY:

24 Q. Well, did you have an awareness, sir, at any point in  
25 time that the loan to Ken Jowdy was running at 15 percent

Nash - Cross/Mr. Haley

1978

1 interest?

2 A. No. I don't recall.

3 Q. Now, you were asked a question on direct in  
4 connection with the return of a portion of your \$100,000  
5 commitment to allow for you. You received \$42,500. Is  
6 that correct?

7 A. Yes.

8 Q. And you had been shown a document where the document  
9 indicated that upon the closing there would be a 60  
10 percent return of investment.

11 Do you recall that?

12 A. Yes.

13 Q. So, not that it is insignificant, sir, but we are  
14 talking about a \$15,000 differential between the document  
15 and when you actually received it. True?

16 A. Yes.

17 Q. So the actual numbers didn't come to fruition  
18 following Lehman's closing. Isn't that correct?

19 MS. KOMATIREDDY: Objection.

20 MR. HALEY: I withdraw the question, Judge.

21 BY MR. HALEY:

22 Q. Were you aware, sir, that as a result of the Lehman  
23 closing, there were to be additional monies coming into  
24 Little Isle IV, or Ula Makika in particular, in the amount  
25 of \$4 million for what are known as milestone payments?



Nash - Cross/Mr. Haley

1979

1 MS. KOMATIREDDY: Objection.

2 THE COURT: Overruled.

3 You can answer if you know.

4 A. I don't know.

5 BY MR. HALEY:

6 Q. Does the name or company *Lehman Brothers* mean  
7 anything to you, sir?

8 A. Yes, it does.

9 Q. And of your knowledge, what was Lehman Brothers?

10 A. A monster company.

11 Q. And are you aware, sir, that Lehman Brothers went  
12 bankrupt in September of 2009?

13 A. Yes.

14 Q. Do you blame Phil Kenner for the bankruptcy of the  
15 Lehman Brothers? Yes or no?

16 A. No.

17 MS. KOMATIREDDY: Objection.

18 THE COURT: Overruled.

19 MS. KOMATIREDDY: It is September 2008, your  
20 Honor.

21 MR. HALEY: Excuse me. That is correct.  
22 September 2008. Thank you.

23 Thank you, Mr. Nash. I have no further  
24 questions.

25 THE COURT: Why don't we take a morning break

**Nash - Cross/Mr. Haley**

1980

1 before Mr. LaRusso's cross-examination. The jury may take  
2 the morning break.

3 (Recess taken at 11:10 am.)

4 (The following ensued in the absence of the jury  
5 at 11:25 am.)

6 THE COURT: Mr. LaRusso.

7 Mr. Miskiewicz?

8 MR. MISKIEWICZ: I just want to raise one  
9 timekeeping or scheduling issue.

10 We have a witness from California after  
11 Mr. Nash. It is Mr. Nolan. I'm hoping we can have a  
12 relatively brief direct with him, and I'm hoping we can  
13 finish with him.

14 And I would ask if the court would consider  
15 either -- I don't know how long this next  
16 cross-examination will be -- but either consider a  
17 slightly shorter lunch or maybe staying a little bit past  
18 4:30, if we can. I know it is difficult to do that but  
19 I'm just asking.

20 THE COURT: How long do you think the cross is  
21 going to be?

22 MR. LaRUSSO: Mr. Miskiewicz had asked me,  
23 Judge. I went through my notes and it is probably going  
24 to take at least through lunch and maybe a little past  
25 there.

**Nash - Cross/Mr. Haley**

1981

1 But I can tell the Court that my cross on the  
2 next witness is not that long, so I don't anticipate it  
3 being as long as either Mr. McKee or Mr. Nash. So I will  
4 do whatever I can to try to expedite the conclusion of  
5 Mr. Nolan's testimony today, if we can.

6 THE COURT: Okay.

7 MR. HALEY: Your Honor, again, it is always a  
8 function of what the witness has to say.

9 I don't necessarily think my cross of Mr. Nolan  
10 will be that extensive. Judge, I do ask for the Court's  
11 beneficence. I do have just a few more questions, I mean  
12 three or four questions. Of this witness.

13 THE COURT: Fine. Let's bring them in and we  
14 will take a shorter lunch break.

15 (The following ensued in the presence of the  
16 jury.)

17 THE COURT: Please be seated.

18 Mr. Haley has a few more questions, so he is  
19 going to go before Mr. LaRusso.

20 Go ahead, Mr. Haley.

21 MR. HALEY: Thank you, your Honor.

22 BY MR. HALEY:

23 Q. Mr. Nash, you testified on direct that the parting of  
24 ways between yourself and Phil Kenner occurred as a result  
25 of some dispute between the two of you. Is that correct?

Nash - Cross/Mr. LaRusso

1982

1 A. Yes. Correct.

2 Q. I see. Well, isn't it true, sir, that the reason  
3 that you no longer used Phil's services was because after  
4 your retirement you found that you couldn't afford his  
5 fees and that it was time to part ways? Isn't that true?

6 A. As I mentioned yesterday, I did.

7 MR. HALEY: Thank you, sir. No further  
8 questions.

9 THE COURT: Mr. LaRusso.

10 MR. LaRUSSO: Thank you, your Honor.

11

12 CROSS-EXAMINATION

13 BY MR. LaRUSSO:

14 Q. Good morning, Mr. Nash.

15 A. Good morning.

16 Q. My name is Bob LaRusso and I represent  
17 Mr. Constantine.

18 I'm going to, just at the outset, turn your  
19 attention to the commercial that you were talking about  
20 earlier.

21 Just by way of setting the stage for the  
22 questions, your made your investment on April 24, 2008,  
23 into Eufora. Is that correct?

24 A. Correct.

25 Q. That was \$100,000?

Nash - Cross/Mr. LaRusso

1983

1 A. Correct.

2 Q. To make that investment you spoke to Mr. Kenner about  
3 it. Is that right?

4 A. Yes.

5 Q. And in sum and substance, during the course of that  
6 conversation he indicated to you that it would be used for  
7 a commercial. Is that correct?

8 A. Yes. Not solely, but yes.

9 Q. So one of the subjects that you brought up in regards  
10 to your investment was the need for money to produce a  
11 commercial that would enhance the value of Eufora?

12 A. Yes.

13 Q. Right. By way, at the time that you made your  
14 investment in April of 2008, you had not met nor spoken to  
15 Mr. Constantine at that point. Is that correct?

16 A. I don't believe so.

17 Q. Actually, the first time that you met him is when you  
18 talked to him about the Global Settlement Fund in June of  
19 2009.

20 A. I don't believe that's the case, no.

21 Q. You have a recollection of meeting and speaking to  
22 Mr. Constantine before he came to your house and discussed  
23 with you Eufora and other aspects?

24 A. I apologize. This happened a long time ago. I'm  
25 trying to remember everything. I'm also trying to burn

**Nash - Cross/Mr. LaRusso**

1984

1 all this from my memory and move forward with my life.

2 But I thought the first time I met Tommy was at  
3 his office after I had invested in Eufora and shortly  
4 afterwards, is my understanding.

5 Q. That is your best recollection. But it could be that  
6 it might have occurred after you first spoke with him  
7 about the Global Settlement Fund?

8 MS. KOMATIREDDY: Objection.

9 THE COURT: Overruled.

10 A. I think it would have been weird for him to come into  
11 my house for the first time meeting me and asking me for  
12 money, but I could be wrong.

13 BY MR. LARUSSO:

14 Q. Okay. That is a fair answer.

15 You do remember Mr. Kenner telling you about the  
16 fact that there would be a meeting regarding the Global  
17 Settlement Fund?

18 A. Yes. He set it up. Correct.

19 Q. And he set it up. And at that point in time  
20 Mr. Constantine accompanied him to speak with you and your  
21 wife.

22 A. Yes.

23 Q. Okay. Let's get back just a few minutes to the  
24 commercial.

25 Do you remember ever speaking to Mr. Constantine

**Nash - Cross/Mr. LaRusso**

1985

1 about the commercial that you understood a portion of your  
2 money might be used for?

3 A. Yes.

4 Q. Do you recall actually receiving an email from him  
5 with the commercial attached?

6 A. Yes.

7 Q. Let me show you what's been marked for identification  
8 as C122T. Would you take a look at this, please.

9 Do you recognize that?

10 A. Yes, I do.

11 Q. And you recognize it because it is an email dated  
12 October 15, 2009, from Mr. Constantine to a number of  
13 email addresses, one of which is yours.

14 Is that correct?

15 A. Correct.

16 Q. And attached to that email is the -- does it refresh  
17 your recollection that is the commercial that we're  
18 referring to?

19 A. It is, yes.

20 MR. LaRUSSO: Your Honor, may I ask that it be  
21 received in evidence at this point?

22 THE COURT: What number is it?

23 MR. LaRUSSO: C122.

24 MS. KOMATIREDDY: No objection, your Honor.

25 MR. HALEY: No objection.

Nash - Cross/Mr. LaRusso

1986

1 THE COURT: C122 is admitted.

2 (Defense Exhibit C122 in evidence.)

3 BY MR. LARUSSO:

4 Q. Dated October 15, 2009, from Mr. Constantine to a  
5 number of email addresses, and I believe the highlighted  
6 one is NashT18?

7 A. Correct.

8 Q. And is that your email address?

9 A. Yes, it is.

10 Q. Does that nickname have anything to do with your  
11 career in the National Hockey League?

12 A. Possibly.

13 Q. The content of the email, Mr. Nash, if I may read:  
14 *"This is the new commercial that we will be airing*  
15 *nationally for Eufora."*

16 And that is what you understood a portion of  
17 your money would be used for. Is that correct?

18 A. Yes.

19 Q. Actually, you had an opportunity to go to  
20 Mr. Constantine's office in the Eufora building and speak  
21 to him about this commercial. Correct?

22 A. Yes.

23 Q. And at one point you actually noted that awards had  
24 been given for this commercial.

25 A. I believe so. Yes.



**Nash - Cross/Mr. LaRusso**

1987

1 Q. Let me show you what has been marked as C21 for  
2 identification.

3 Are these possibly the two awards that you  
4 remember seeing when you discussed with Mr. Constantine  
5 the commercial that we have been discussing so far?

6 A. Yes. It rings a bell.

7 I don't remember seeing these, but I knew they  
8 were great commercials. I was extremely proud of them.

9 Q. You don't recognize these as the particular awards  
10 that you saw in his office?

11 A. No. I was more aware of the patent.

12 MR. LARUSSO: I don't know if I said the exhibit  
13 number correctly. It should have been C121.

14 BY MR. LARUSSO:

15 Q. Mr. Nash, did you ever have any difficulties  
16 communicating with Mr. Constantine?

17 A. Never.

18 Q. You were able to reach out to him and speak with him  
19 on any subject that you wished to talk to him about?

20 A. Correct.

21 Q. Likewise, he was able to discuss with you any issues  
22 that you had?

23 A. Yes.

24 Q. I'm going to just focus in on the meeting that took  
25 place at your house and see if I can put a timeframe on

Nash - Cross/Mr. LaRusso

1988

1 it.

2 Your investment was made June 10, 2009. I  
3 believe one of the Government Exhibits showed a transfer  
4 of the money on that day.

5 Do you remember that?

6 A. Yes.

7 Q. Would the meetings with Mr. Constantine and  
8 Mr. Kenner have occurred sometime around that or shortly  
9 before?

10 A. Can you repeat the question?

11 Q. If you sent your email June 10 of 2009, would you  
12 have met with them around that date, on that date, or  
13 shortly before?

14 THE COURT: You said sent your email. You mean  
15 the money?

16 MR. LaRUSSO: The money. I apologize.

17 A. I sent the money on what date?

18 BY MR. LARUSSO:

19 Q. Do you remember, it is Government Exhibit 1510, and  
20 it says \$100,000 to Ron Richards' account June 10, 2009?

21 A. For the Global Settlement Fund. Correct?

22 Q. Correct.

23 A. Yes.

24 Q. When would you have met with Mr. Constantine and  
25 Mr. Kenner regarding that?

**Nash - Cross/Mr. LaRusso**

1989

1 A. Shortly before that.

2 Q. Now, you told us that there were a lot of issues that  
3 were discussed in connection with the use of the Global  
4 Settlement Fund monies at that meeting. Is that correct?

5 A. Correct.

6 Q. And then, in addition to discussing the Global  
7 Settlement Fund you also mentioned that there was a  
8 discussion with Mr. Constantine particularly about Eufora.  
9 Is that also correct?

10 A. Yes. That was a big part of it because I was getting  
11 an extra percentage in a company that had a huge value  
12 attached to it, so it was a no-brainer for me. It was  
13 just a selling point from them to me.

14 Q. Okay. But in addition to discussing Eufora and the  
15 potential, the investment that you had made, you also said  
16 that Global Settlement Fund was in part going to be used  
17 to get rid of some bad apples.

18 Do you remember that?

19 A. Yes.

20 Q. Could you tell us who the bad apples were?

21 A. Ethan Moreau. Owen Nolan. Joe Juneau. And I think  
22 there is one other.

23 Q. And when you saying that they were classified as the  
24 bad apples, is it because they were looking to sell their  
25 interests in Eufora?

**Nash - Cross/Mr. LaRusso**

1990

1 A. I didn't know at the time they were wanting to sell.  
2 I'm sure they all wanted money out of it at some point,  
3 but they were causing waves outside of Eufora, is what I  
4 mean when I say bad apples.

5 Q. Thank you. And part of the discussion centered  
6 around the fact that global settlement funds were going to  
7 be used to acquire their interest in Eufora and their  
8 interest in a hangar as well?

9 A. Can you say that again?

10 Q. Part of the discussion that you had regarding the  
11 Global Settlement Fund is that the money could be used to  
12 acquire their interest in Eufora, which included the  
13 interest in the air park, which has been referred to at  
14 times as the hangar. Is that correct?

15 A. Correct. And we were obtaining their interest.

16 Q. And I think you testified that significant for you  
17 was the fact that you and others were going to obtain  
18 their shares once the Global Settlement Fund had acquired  
19 their interest, as we just discussed. Is that correct?

20 A. Yes. Once we paid them out, their percentages would  
21 be divvied up between the Global Settlement Fund.

22 Q. Right. Do you know if Mr. Juneau's interests were in  
23 fact paid out by money from the Global Settlement Fund?

24 A. I believe they were.

25 Q. Do you recall that Mr. Juneau's interest was paid out

**Nash - Cross/Mr. LaRusso**

1991

1 by providing an airplane to him in lieu of the monies that  
2 he was seeking for his shares in Eufora?

3 Does that refresh your recollection?

4 A. I knew he was involved in the Falcon. Yes.

5 Q. And do you know that the Falcon that he got in return  
6 for his interest was valued at \$450,000?

7 Do you remember that?

8 A. I don't recall exactly what the numbers were.

9 Q. Well, do you have any recollection of the fact that  
10 when Juneau was bought out, the Global Settlement Fund did  
11 not have to pay the total amount of money that he was  
12 seeking, which was \$550,000?

13 MS. KOMATIREDDY: Objection.

14 THE COURT: Overruled.

15 If you know.

16 A. I don't remember all the details of Joe Juneau's  
17 situation.

18 BY MR. LARUSSO:

19 Q. To the best of your recollection, all you know is  
20 that the monies from the Global Settlement Fund were used  
21 in some fashion to satisfy his interest in Eufora. The  
22 values you don't know.

23 A. Correct.

24 Q. Is that fair?

25 A. Correct.

**Nash - Cross/Mr. LaRusso**

1992

1 Q. Okay. Now, you also, and, again, I'm not going to  
2 rehash everything, but just a few points. You indicated  
3 that the Global Settlement Fund had other purposes as  
4 well, one of which was to pay lawyers. Is that correct?

5 A. That's right.

6 Q. And so, I don't put words into your mouth, what did  
7 you understand at that point when you were told that the  
8 monies from the Global Settlement Fund would be used to  
9 pay lawyers?

10 Just what do you remember on that?

11 A. I had no issue with it. As I stated, they sat in my  
12 living room, we discussed some of the ongoing issues, the  
13 shortage of funding. Diamanté and the lawyer fees that  
14 were adding up on that side. Phil running out of money.  
15 The buyout of those guys for their interest. And the  
16 Kristie Myrick lawsuit against Phil Kenner.

17 Q. So there were a number of lawsuits that were  
18 discussed in regards to the use of global settlement  
19 funds. Is that correct?

20 A. Correct.

21 Q. But the overall purpose was to, as best as possible,  
22 settle these open suits and to try and recover as much of  
23 the investments that were made in particular with  
24 Mr. Jowdy down in Mexico.

25 Is that correct?

Nash - Cross/Mr. LaRusso

1993

1 A. Absolutely. It had started with Eufora, as I have  
2 mentioned. Tommy gave a speech about the progress of  
3 Eufora and how great it was doing.

4 Phil had talked about Diamanté and how we were  
5 close to the finish line. We needed to get that last kick  
6 over the hump and take over the property hopefully and be  
7 able to sell it on our own.

8 Q. Were you aware, before you actually made your  
9 investment or contribution into the Global Settlement  
10 Fund, that civil suits had actually commenced against  
11 Jowdy, Ken Jowdy?

12 A. That there was --

13 MS. KOMATIREDDY: Objection. Personal  
14 knowledge.

15 THE COURT: Overruled.

16 You can answer.

17 A. Can you say that again?

18 BY MR. LARUSSO:

19 Q. Okay. Your contribution is June of 2009. Correct?

20 A. Correct.

21 Q. Do you remember at or about that time whether or not  
22 a suit in fact had been filed or was contemplated to be  
23 filed against Ken Jowdy in regards to the money in the  
24 Global Settlement Fund.

25 A. I knew there was an ongoing lawsuit against

Nash - Cross/Mr. LaRusso

1994

1 Ken Jowdy. Yes.

2 Q. And that -- your statement is right on the money.

3 And I just want to make sure this has been received in  
4 evidence as C104.

5 MS. KOMATIREDDY: Objection, your Honor.

6 BY MR. LaRUSSO:

7 Q. Do you remember seeing that email dated June 17,  
8 2009, from Mr. Constantine to a number of email addresses?

9 A. My address is on there. Yes.

10 Q. And do you remember at any time receiving an email  
11 enclosing the two complaints against Mr. Jowdy at or about  
12 the time June 17, 2009?

13 A. To be honest, I don't really recognize this email and  
14 the wording in it. I may or may not -- I obviously got  
15 it. I don't know what it exactly means. I don't know  
16 what's in these.

17 Q. Just the last question. Exhibits 104A and 104B, only  
18 for identification. Look at the caption.

19 Does that in any way refresh your recollection  
20 to receiving copies of complaints against Mr. Jowdy in  
21 regards to the monies the Global Settlement Fund was  
22 paying?

23 A. Yes, that looks familiar.

24 Q. Okay. Thank you.

25 Now, you also testified on direct that during



Nash - Cross/Mr. LaRusso

1995

1 your discussions with Mr. Kenner and Mr. Constantine at  
2 your home in regards to the Global Settlement Fund, there  
3 was mention of a company called Diamanté and the  
4 acquisition of Diamanté.

5 Do you remember that?

6 A. Yes.

7 Q. What did you understand Diamanté Air to be at that  
8 time?

9 A. Diamanté Air?

10 Q. Yes. Did you ever hear of a company called Diamanté?

11 A. Diamanté. I don't know what the *Air* is.

12 Q. Okay. Do you remember anything about acquiring a  
13 company that Mr. Jowdy -- that had ownership of several  
14 airplanes?

15 A. No.

16 Q. Let me show you, I'm going to put it up on the  
17 screen -- by the way, would it be fair to say that  
18 Mr. Constantine provided undated information to you and  
19 other contributors regarding the monies that were spent by  
20 the Global Settlement Fund?

21 A. I had went in there to Tommy's office. I don't  
22 recall the date. Again, if I had an issue with anything,  
23 both him and Phil were open to sitting down and discussing  
24 any issue that I had.

25 I remember going over to Tommy's office and

**Nash - Cross/Mr. LaRusso**

1996

1 going over the whiteboard where he had everything marked  
2 out as to where the money went. And I think I had a  
3 conversation as well with his accountant.

4 Q. And after those conversations, you were satisfied  
5 that your answers were properly responded to?

6 A. Yes. I didn't do much talking. I just listened.  
7 And yes, I was satisfied.

8 Q. I'm going to show you what has been received in  
9 evidence as Government Exhibit 31. I'm sorry, Defense  
10 Exhibit C31.

11 Do you see that? That is an email dated  
12 July 27, 2009, which is approximately a little more than a  
13 month after you made your contribution to the Global  
14 Settlement Fund.

15 Do you see your email address in there?

16 A. Does this screen work here? For me?

17 Q. I'm sorry?

18 THE COURT: She is going to turn it on for you.

19 BY MR. LaRUSSO:

20 Q. Mr. Nash, do you see your email address up there?

21 A. Yes, I do.

22 Q. Just take a look. And I will ask you to briefly read  
23 it to yourself. I'm going to highlight certain portions  
24 of it.

25 Do you recall receiving this email, Mr. Nash?

Nash - Cross/Mr. LaRusso

1997

1 And, again, take whatever time you need to look at it.  
2 There are two pages. And I can provide you with the  
3 original.

4 It may go faster if I do this, your Honor, with  
5 your permission.

6 Mr. Nash, do you remember Mr. Constantine in an  
7 email to you on July 27, 2009, telling you, "*As you may*  
8 *recall through our discussions, one of the issues that was*  
9 *reached in the resolve was a part of our Global Settlement*  
10 *effort was Diamanté Air.*"

11 Does that refresh your recollection, Mr. Nash,  
12 now to having received an email discussing a company  
13 called Diamanté Air?

14 A. Not really, to be honest.

15 I knew we were involved in an airplane. I knew  
16 it as the Falcon. That's all I really kind of knew.

17 I went to the hangar as well with Tommy and he  
18 showed me the plane and he showed me the inside of it and  
19 told me I could use it anytime I wanted to.

20 Q. Does this refresh your recollection that part of the  
21 Global Settlement Fund effort was to resolve the ownership  
22 of three airplanes that Mr. Jowdy had control of and that  
23 Global Settlement Funds were going to be used to resolve  
24 that difference, that dispute?

25 A. Again, the airplanes were something I didn't really

Nash - Cross/Mr. LaRusso

1998

1 know a whole lot about.

2 I wasn't really interested. It wasn't my  
3 original investment. I didn't invest into any airplanes  
4 originally. All I knew from the Global Settlement Fund is  
5 my hundred thousand dollars was -- was getting me a part  
6 of a Falcon, and that's all I kind of know.

7 And the only name associated with that Falcon in  
8 my recollection is Joe Juneau.

9 Q. And when you received emails from Mr. Constantine,  
10 especially when they discussed the expense of Global  
11 Settlement Fund's money, did you call him up if you had  
12 any questions regarding what the monies were being spent  
13 for?

14 A. Not really in the process. I think at the end of it  
15 all is when everything kind of hit the fan.

16 Q. So during this period of time, July of 2009, when you  
17 would receive email communications giving you an update on  
18 the Global Settlement Fund, you would have read the  
19 emails. Correct?

20 A. Skimmed it, possibly.

21 Q. But you never called Mr. Constantine and then asked  
22 questions regarding what was contained in that email?

23 A. I don't believe I would have specifically called. He  
24 may have talked to me about it. I can't say for sure.  
25 Again, they were always open to any discussion.

Nash - Cross/Mr. LaRusso

1999

1 Q. Does it refresh your recollection a little bit -- and  
2 I apologize to the Court.

3 Going on, it talks about *Diamanté Air which*  
4 *involves several airplanes and a lawsuit which was filed*  
5 *by the bank against Phil and those of you who invested in*  
6 *the company?*

7 Does that refresh your recollection more about  
8 the Diamanté Air?

9 No?

10 A. Not really. I didn't know anything about several  
11 airplanes. I knew about one, really, that I can remember.

12 Q. Other than Mr. Juneau, did you know that there were  
13 other hockey players who also had invested in a company  
14 called Diamanté Air?

15 A. I believe Gonchar rings a bell. And I believe there  
16 was credit lines.

17 Tommy and Phil used to talk to me about a lot of  
18 stuff, stuff I didn't care a whole lot about because I  
19 wasn't involved so.

20 Q. Okay. So you do have some vague recollection about  
21 Mr. Gonchar owning some interest in an airplane with other  
22 hockey players, but you don't know the particulars of it.  
23 Is that correct?

24 A. I don't know any particulars.

25 Q. All right. Do you remember -- and again, I'm not

## Nash - Cross/Mr. LaRusso

2000

1 going to read it -- well, let me jump because you have  
2 given us much of what your recollection is. I'm just  
3 going to jump down and read the last portion and see if  
4 this helps refresh your recollection of more knowledge  
5 regarding Diamanté Air.

6 *"For those of you that invested in Diamanté Air*  
7 *originally,"* which was not you. Is that correct?

8 A. Correct.

9 Q. *"This solution and your current ownership of this*  
10 *airplane does not alleviate Jowdy and Bailman's*  
11 *responsibility for this mismanagement of the original*  
12 *deal, and we intend to pursue every legal and financial*  
13 *remedy to recover your losses along with our current*  
14 *endeavors against Jowdy. This is the last lawsuit that is*  
15 *filed. This solution simply got the airplane, itself, and*  
16 *the bank issue, loan, personal guarantee, lawsuit sorted*  
17 *out."*

18 Does that refresh your recollection a little  
19 more about the acquisition of the airplane for  
20 Mr. Gonchar's involvement and others?

21 A. Not really. The only thing I cared about was Jowdy.  
22 Anything involving Jowdy and Diamanté specifically, Eufora  
23 specifically.

24 As long as I didn't owe money, I didn't really  
25 pay attention to it.

## Nash - Cross/Mr. LaRusso

2001

1 Q. The last part, I would ask you to listen to this and  
2 then I'm going to ask you the same question about  
3 recollection.

4 *"Finally, this is just one of the investment*  
5 *acquisitions and business solutions that overlay over the*  
6 *legal strategy that we presented as part of the Global*  
7 *Settlement plan.*

8 *I have attached the documentation for all of you*  
9 *to sign for your respective share of ownership in the*  
10 *airplane company. This is a very basic operating*  
11 *agreement, but you should definitely read it, sign it, and*  
12 *send it back to me at your convenience.*

13 *Please do not hesitate to call me if you have*  
14 *any questions. You will be receiving a similar agreement*  
15 *for the ownership interest that we acquire from the bad*  
16 *guys of the Eufora shares as well as the Avalon hangar*  
17 *building, which is actually where the plane is kept and*  
18 *Eufora's headquarters. I have also attached photos of the*  
19 *plane?"*

20 Does that refresh your recollection anymore  
21 about Diamanté Air and its connection with the assets also  
22 belonging to the bad guys?

23 A. Referring to the bad apples?

24 Q. Yes.

25 A. Yes. I recognize some of the verbiage in there.

Nash - Cross/Mr. LaRusso

2002

1 Again, the only plane I ever saw is the Falcon. The only  
2 file I have is a Falcon file in my office, which contains  
3 nothing.

4 I don't know where, if I signed something, where  
5 it is. Or what I received after that, I don't know.

6 Q. You have no doubt that you received this email.  
7 Correct?

8 A. If my address is on it, I must have.

9 Q. You just don't have a recollection of some of the  
10 particulars that we were discussing?

11 A. No.

12 Q. By the way, would you agree with me that when you  
13 discussed the purposes of the Global Settlement Fund, it  
14 was your understanding that the purposes were, quote,  
15 *"very broad,"* end quote?

16 A. Very broad?

17 Q. Very broad.

18 A. About the Global Settlement Fund?

19 Q. Yes.

20 A. There was, they were laser focussed in some areas and  
21 very broad in others. Yes.

22 Q. Laser focused on Jowdy and the lawsuit?

23 A. On Jowdy.

24 Q. But very broad in other areas such as the airplane  
25 and the hangars and other suits and things like that. Is



Nash - Cross/Mr. LaRusso

2003

1 that correct?

2 A. Yes. I didn't, again, I didn't care about any of  
3 that other stuff. All I cared about was Diamanté, getting  
4 that figured.

5 That is a big project, worth a lot of money.  
6 Eufora apparently was worth, I don't know how much. Any  
7 one of those hit, I am sailing away from the whole thing.  
8 That's all I cared about.

9 Q. When I asked you whether or not you discussed the  
10 purposes of the Global Settlement Fund, you characterized  
11 the use of the Global Settlement Fund as a very broad  
12 area.

13 A. Well, I mentioned the bad apples. I mentioned  
14 Phil Kenner's secretary. I mentioned lawsuits and bills.  
15 If you call that broad, then...

16 Q. Do you remember being asked this question and giving  
17 this answer?

18 3500 TM3. Page 30 of deposition September 17,  
19 2014.

20 "Question:" -- I keyed up to the wrong page. I  
21 apologize.

22 Page 10. Line 3.

23 "Question: What is your understanding of the  
24 purposes of the Global Settlement Fund?

25 "Answer: The Global Settlement Fund, hmm, my

Nash - Cross/Mr. LaRusso

2004

1     *understanding was it was very broad, it was going to be*  
2     *used for a number of things."*

3             Do you remember giving that answer to that  
4     question?

5     A.    I do in a case that revolved nothing around the  
6     Global Settlement Fund.   Yes.

7     BY MR. LaRUSSO:

8     Q.    So you described the purposes of the Global  
9     Settlement Fund on a prior occasion as very broad?

10    A.    Apparently, I did.

11    Q.    You did.   Not apparently.   You did.   Is that correct?

12    A.    Correct.

13    Q.    Now, do you remember, after you had made your  
14    contribution, being invited to attend by telephone  
15    conference call with Mr. Constantine and the other  
16    contributors to the Global Settlement Fund?

17    A.    I don't recall.

18    Q.    I will try and do this as quick as I can, Mr. Nash.

19             I'm going to show you what has already been  
20    received in evidence as C33, C34, C35, C36, and C32.

21    Okay?   Just take a look at them.

22             I'm going to ask you, do recognize that these  
23    are emails from Mr. Constantine?   You are included as one  
24    of the recipients.

25    A.    Okay.

**Nash - Cross/Mr. LaRusso**

2005

1 Q. And do you agree with me that these are emails that  
2 are dated from June 10, the date that you actually made  
3 your first contribution, through June 25, again June 10,  
4 August 19.

5 And I will show you one more, C36, which is  
6 October 22, 2009.

7 A. Yes, I do.

8 Q. Does that refresh your recollection that there were a  
9 series of conference calls held between June and October  
10 where you were invited to participate by way of telephone,  
11 with Mr. Constantine providing information regarding the  
12 Global Settlement Fund?

13 A. Yes, I do.

14 Q. While I'm up here. In addition to having these  
15 conference calls with Mr. Constantine so that you could be  
16 updated on the expenditures of money from the Global  
17 Settlement Fund, did he also tell you or provide  
18 information about publicity that was going to be used in  
19 part by the Global Settlement Fund to counter information  
20 that Mr. Jowdy had been putting out?

21 A. Over a newspaper article?

22 Q. Yes.

23 A. Yes.

24 Q. And in fact let me show you what is in evidence as  
25 C29.

Nash - Cross/Mr. LaRusso

2006

1 Do you remember an email on June 18 from  
2 Mr. Constantine actually referring to a newspaper article  
3 in regards to that?

4 A. That was printed by us?

5 Q. Yes.

6 A. Yes.

7 Q. Now, I had already shown you one of the emails  
8 regarding the Jowdy suit. You've already testified to it.

9 But would it be fair to say that in your  
10 continued communications with Mr. Constantine, either in  
11 person or by telephone, he also kept you up to date on the  
12 status of the lawsuit against Mr. Jowdy?

13 A. Yes. Up to a certain point.

14 Q. When you say certain point, are you talking about a  
15 timeframe?

16 A. Yes.

17 Q. What timeframe would that be?

18 A. Much later. In the end. I don't think he had much  
19 to do with the Jowdy deal at the end of all this.

20 Q. And when you say *at the end of all this*, we're  
21 talking like 2012? 2013? Your best recollection.

22 A. 2013.

23 He was heavily involved initially. He was  
24 leading the charge and the mediation in California against  
25 Ken Jowdy that was, at the time, we all thought was

Nash - Cross/Mr. LaRusso

2007

1 resolved.

2 Q. You kind of raised an issue I was going to raise a  
3 little bit later. I will get back to that in a minute.  
4 But I want to finish, if I could with you, about  
5 information Mr. Constantine was providing to you about the  
6 Global Settlement Fund and purposes.

7 Do you have any recollection -- I'm going to  
8 show them to you so we don't have to waste time in  
9 answering the question.

10 C24 in evidence, your Honor.

11 Do you remember receiving this email from  
12 Mr. Constantine on November 9, 2009?

13 A. Yes. I believe so.

14 Q. And when you say that Mr. Constantine was  
15 spearheading the effort to try to get the investments back  
16 from Mr. Jowdy, this was in part some of the efforts that  
17 he was making. Is that correct?

18 A. Yes.

19 Q. He had contact with a man by the name of  
20 Mr. Sonnenblick, and Mr. Sonnenblick was offering at least  
21 \$15 million as a possible cashout so that you and the  
22 other investors may be able to get a return on the  
23 investment that you had made. Is that right?

24 A. That name doesn't ring a bell.

25 Again, I don't know the details of it, but,

Nash - Cross/Mr. LaRusso

2008

1 again, we were very close to solving Diamanté. Yes.

2 Q. And those were the efforts that Mr. Constantine was  
3 making on your behalf as well the other hockey players.

4 Is that right?

5 A. Him and Phil Kenner, together. Yes.

6 Q. Thank you.

7 Do you know a man by the name of Michael  
8 Stolper?

9 A. I know the name. Never met him personally.

10 Q. Did you ever discuss Michael Stolper with anyone?

11 A. I believe so. We had a lot of lawyers, so forgive  
12 me.

13 Q. Let me see if I can kind of direct you to a  
14 timeframe.

15 I'm going to show you what has been marked for  
16 identification as C37. I'm going to refer you to what is  
17 in evidence as C37C. And I will point to a few names  
18 here. Mr. Peca. Mr. McKee. And then there's an  
19 individual here that you may recognize.

20 A. Looks like my signature. Hard to tell.

21 Q. That's your name.

22 A. Okay.

23 Q. Correct? I believe the date is July 10 of 2010. Is  
24 that correct?

25 A. Correct.

Nash - Cross/Mr. LaRusso

2009

1 Q. Just take a look at this. I'm going to ask you a few  
2 questions. This document is attached to a number of other  
3 exhibits.

4 A. Okay.

5 Q. Does it refresh your recollection you've ever seen  
6 something similar to this?

7 A. Yes.

8 Q. Using this document and the knowledge that you had on  
9 the page that I showed you, what do you remember about  
10 this document that you signed acknowledging in effect  
11 Mr. Stolper being able to represent your interest?

12 A. To be honest about it, not a lot.

13 We were suing everybody and their dog, and that  
14 may really, unless you have something to show me to  
15 refresh it further, I don't recall.

16 Q. Do you remember, by signing that acknowledgement,  
17 that you were agreeing to allow him to represent you in a  
18 dispute with Mr. Constantine?

19 A. Against? Dispute against who?

20 Q. Mr. Constantine and the method in which he was  
21 running Eufora.

22 A. Yes. I believe that time came when we went after  
23 Tommy.

24 Q. Could you tell us, when you say *we*, who is "*we*"?

25 A. All the hockey players. All the investors involved.

**Nash - Cross/Mr. LaRusso**

2010

1 I remember having a meeting at Tommy's office  
2 when we had everyone on the phone and --

3 Q. That would have been the shareholder's meeting, we  
4 are talking about?

5 A. Shareholder's meeting. And cops and everyone was  
6 there. And it was our chance to kind of grill him.

7 Q. Would it be fair to say that this document that I  
8 showed you, C37, and in particular the one that had your  
9 signature on it, does that refresh your recollection that  
10 you hired Mr. Stolper to represent your interest in that  
11 regard?

12 A. Okay. Yes.

13 (Continued on the following page.)  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



NASH-CROSS-LaRUSSO

2011

1 CONTINUED CROSS EXAMINATION

2 BY MR. LaRUSSO:

3 Q And in regards to Mr. Stolper, did you also represent or  
4 retain him to file suit against Mr. Constantine in regards to  
5 his running or operating Eufora?

6 A I believe we did.

7 Q Were you a party to that group that was going to and did  
8 initiate suit against Mr. Constantine?

9 A I believe I was. I never wanted to be part of anything.  
10 I didn't like controversy. I was very upfront with everyone  
11 about that. I live in the same city as these guys. I just  
12 wanted to know what was going on. I wanted to know the truth.  
13 And whoever was going to get me that I signed up for it.

14 Q In regards to -- you say you never spoke to Mr. Stolper?

15 A I have spoken to Mr. Stolper, I believe.

16 Q Who else did you speak to in reference to signing on with  
17 Mr. Stolper? Do you know who else pitched you for this?

18 A Phil Kenner, probably.

19 Q Anyone else?

20 A I don't recall.

21 Q Now, do you remember ever saying that "you never signed  
22 on for this," meaning the lawsuit against Mr. Constantine?

23 A Again, that goes back to my point where I didn't really  
24 want to sue anybody. I just wanted to sit on the sidelines  
25 and let everyone else figure it out, and let the dust fall

NASH-CROSS-LaRUSSO

2012

1 where it may.

2 Q At this time period when you signed this acknowledgment  
3 letter for Mr. Stolper's representation at the time the suit  
4 was filed against Mr. Constantine, were you aware that this  
5 group that Mr. Stolper was representing was looking to take  
6 over Mr. Constantine's control of Eufora?

7 A Yeah. I believe there was a large group, yes.

8 Q Do you know who was a party to that large group?

9 A I know John Kaiser, Bryan Berard, and Phil Kenner. I  
10 think if I did sign that, my main concern was that if I didn't  
11 sign it I wouldn't retain my percentage.

12 Q So you signed it reluctantly and did not agree with the  
13 suit that had been filed against Mr. Constantine, is that  
14 fair?

15 A I didn't fully understand. Again, I'm not privy to all  
16 these conversations; Jowdy, Tommy, and Phil. I'm privy to one  
17 side or the other, never in one room. That was a constant  
18 battle. Let's everyone get into one room and you guys can  
19 answer everything. And whoever's left standing is the good  
20 guy. And that never happened.

21 Q There was an effort to do that, wasn't there, the  
22 shareholders meeting?

23 A Yes.

24 Q That was arranged by Mr. Constantine.

25 A I don't know who arranged it.

NASH-CROSS-LaRUSSO

2013

1 Q Did you participate in it?

2 A I was there, correct.

3 Q Were you there in person or were you there by calling in?

4 A I was there in person.

5 Q That was a pretty lengthy meeting, is that correct?

6 A It was a lengthy meeting. But, again, I wanted everyone  
7 in the room. And Phil Kenner and John Kaiser, and a lot of  
8 the people were not allowed in that room.

9 Q Do you know why they were not allowed in the room?

10 A I can't recall.

11 Q Do you remember whether or not any accusations had been  
12 made against a number of those individuals, number one, that  
13 they weren't shareholders and, two, that they were shown to  
14 have defrauded Eufora? Do you remember that?

15 MR. HALEY: I object.

16 THE COURT: Sustained.

17 MR. HALEY: Thank you.

18 A I believe there was --

19 THE COURT: I sustained the objection. Don't  
20 answer.

21 THE WITNESS: I'm sorry.

22 Q What did you understand the reason being why those  
23 individuals were not permitted at the meeting?

24 A That rings a bell. There was a lot of talk about I gave  
25 500,000 into this company. And Tommy would laugh about it and

NASH-CROSS-LaRUSSO

2014

1 say no, he didn't. He has no part of this company. You know,  
2 I remember conversations with him about -- about that. I  
3 mean, there was -- I don't know, there was a cop there  
4 preventing these guys, or a bodyguard or something.

5 Q Bob Rizzi?

6 A I don't recall his name. But there was someone there not  
7 allowing these guys into the room. Again, I was upset because  
8 I wanted them in the room one way or another. It was the only  
9 way we were going to find out the truth.

10 Q Do you remember at any point in that meeting where any of  
11 these investors that were there either by telephone  
12 participation or in person, being offered their money back  
13 that they invested in Eufora or contributed to Eufora?

14 A Again, there may have been. It wasn't me, I can tell you  
15 that. I was going out the door.

16 Q I'm going to show you what is marked for identification  
17 as 89-A. I'm going to refer you to the last page and just  
18 read that to yourself. See if that refreshes your  
19 recollection that Mr. Bob Rizzi is offered a 100 percent  
20 return on his investment that he invested in Eufora.

21 (Hanging.)

22 A Yes. I think I do.

23 Q You recall that.

24 A I think there were some conversations, yeah, about --  
25 about all of that, I think. The evaluation of the company.

NASH-CROSS-LaRUSSO

2015

1 It's just my thinking.

2 Q That's okay. But in terms of what transpired at the  
3 meeting, do you recall that some of the shareholders,  
4 particularly Mr. Rizzi, was being offered his money back?

5 A I believe so. I don't know Bob Rizzi. But I believe  
6 that conversation was made.

7 Q Do you recall other portions of that conversation, other  
8 investors being offered their money back?

9 A I believe so.

10 Q Does the name Nick Privitello ring a bell?

11 A No.

12 Q Do you remember -- again, just turn to the first page.  
13 Do you remember a man by the name of Nick Privitello being  
14 present, either by a telephone call -- I'm just going to ask  
15 you to take a look at some of these names here.

16 A He wasn't in the room. I know that.

17 Q Nick Privitello?

18 A Again, I don't know him, but I see he was on the phone.

19 Q Do you remember if he was offered his money back by  
20 Mr. Constantine for his investment?

21 A Again, I don't recall.

22 Q But you do recall offers being made to some of the  
23 shareholders during the course of the meeting to have their  
24 monies returned to them?

25 A As we did with the bad apples.

NASH-CROSS-LaRUSSO

2016

1 Q By the way, do you know who was responsible for bringing  
2 the cop to the meeting, the shareholders meeting? Do you  
3 remember Tommy Constantine being responsible for inviting him  
4 there?

5 A Inviting the cop?

6 Q Yes.

7 A Meaning John Kaiser or?

8 Q Bob Rizzi.

9 A Oh, Bob Rizzi. Yeah. He was there for protection, I  
10 believe.

11 Q He was there also representing his own interest as well?

12 A Right.

13 Q Mr. Nash, this is Defendant's Exhibit C-123. Take a look  
14 at that, please.

15 (Hanging.)

16 Q Do you recognize that?

17 A That is from me to Tommy.

18 Q On June 3rd, 2011. Do you recognize the e-mail?

19 A I recognize. I don't know what it's in reference to.

20 Q Take a look at the exhibit that is attached. Looking at  
21 the entire exhibit --

22 MS. KOMATIREDDY: Objection, Your Honor. This is  
23 completely irrelevant.

24 MR. LaRUSSO: If I may, Judge.

25 MS. KOMATIREDDY: May we have a side-bar to see the

2017

1 exhibit?

2 THE COURT: Yes.

3 (Whereupon a side-bar conference was conducted.)

4 (Matter continued on the next page.)

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NASH-CROSS-LaRUSSO

2018

1 (Side-bar conference.)

2 THE COURT: I don't need the drama with the  
3 objections. I don't need the banging of the hand on the  
4 table. Okay?

5 MS. KOMATIREDDY: Yes, sir.

6 MR. LaRUSSO: Judge, I didn't intend to introduce  
7 the exhibit or the attachment. At least I wasn't intending  
8 to. This is going to establish "glad I didn't sign up for  
9 that." He's telling him that even though he signed the  
10 letter, he didn't sign up for a lawsuit. That's what this  
11 shows. Right now he says he doesn't remember. I'm asking him  
12 to look at it to refresh his recollection of what he meant  
13 when he said that. That's all it's being introduced for.

14 THE COURT: I will allow it.

15 (Whereupon the side-bar conference was concluded.)

16 (Matter continued on the next page.)

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NASH-CROSS-LaRUSSO

2019

1 (Matter continued in Open Court.)

2 CONTINUED CROSS EXAMINATION

3 BY MR. LaRUSSO:

4 Q Mr. Nash, let me show this to you again. Having looked  
5 at the entire exhibit, does that help refresh your  
6 recollection of what you were referring to in this e-mail to  
7 Mr. Constantine at this point in time?

8 A I believe -- I believe that was it.

9 Q Tell me what it is that it refreshes your recollection  
10 about when you refer to the fact that you didn't sign on?

11 A Well, from what you showed me, I did sign on. So I don't  
12 know why I'm saying there that I didn't sign on. Maybe it's  
13 to keep Tommy close. He didn't know that I signed on or  
14 something, I don't know.

15 Q Does it refresh your recollection that you said you  
16 didn't sign on to the lawsuit that was filed?

17 A The lawsuit filed against them, yeah. I believe that I  
18 listened to it. I wasn't 100 percent sure that I signed up  
19 for it. I know they didn't pay me monies for it. Again,  
20 Tommy and Phil lived in my neighborhood. I didn't want to  
21 rock the boat. I didn't want to upset anyone. I didn't want  
22 to be close to anyone. I wanted to make sure that if someone  
23 was going to be paid, it was going to be me.

24 Q The one thing throughout this whole period was the open  
25 line of communication with Mr. Constantine, is that correct?

NASH-CROSS-LaRUSSO

2020

1 A Yes, he was good with that.

2 Q Again, you contacted him and he would respond to any  
3 inquiries that you had during this whole period of time?

4 A Correct.

5 Q I'm going to show you what was received in evidence as  
6 762. Do you recall this exhibit?

7 A Yes.

8 Q You testified that this came out of your Eufora file, the  
9 documents that you said were there?

10 A Yes.

11 Q You testified, I believe on direct, regarding the fact  
12 that your wife and yourself wrote much of the information  
13 contained in here?

14 A On the back page, that is correct.

15 Q However, the third page of this exhibit where the manager  
16 of the company Eufora LLC was to sign. There is no signature,  
17 is that correct?

18 A That's correct. That's a big part of the reason why we  
19 are here today.

20 Q Can you tell me what you understood this document to be?

21 A I -- it was always give money first, documents always  
22 came later. I believe this was -- I don't recall if this was  
23 the extra percentage that I got from the Global Settlement  
24 Fund or if this was the initial ownership I got in Eufora.  
25 But this was all the -- pretty much all the documentation I

NASH-CROSS-LaRUSSO

2021

1 had.

2 Q But this is not an executed document by anybody at Eufora  
3 LLC, is that correct?

4 A It's not, but I don't know where else I would have got it  
5 besides Tommy.

6 Q Do you remember actually talking to Mr. Constantine  
7 during, I believe the dates we're talking about is in June of  
8 2010, about a settlement plan?

9 A Can you give me that again. I'm sorry.

10 Q Do you remember speaking to Mr. Constantine around this  
11 period of time, June 2010, discussing a settlement plan?

12 A A settlement plan regarding?

13 Q Your investment in Eufora?

14 A Me personally?

15 Q Yes.

16 A Possibly. Again, I don't recall.

17 Q Now, this particular document, let me ask you a few  
18 preparatory questions. When you bought into Eufora in April  
19 of 2008, do you recall that you bought into -- your interest  
20 was being held by a company called AZ Eufora Partners?

21 MR. LaRUSSO: One moment, Your Honor.

22 THE COURT: Yes.

23 (Whereupon Mr. LaRusso confers with his client.)

24 MR. LaRUSSO: May I have a moment, Your Honor?

25 (Pause in the proceeding.)

NASH-CROSS-LaRUSSO

2022

1 Thank you for your indulgence, Your Honor. This may  
2 be better if I approach the witness, Judge.

3 Q The document that we're talking about is 762. The third  
4 page does not have the signature of the entity that would be  
5 issuing you your membership interest. It is called Eufora LLC  
6 Delaware Limited Liability Company. Do you see that?

7 A Correct.

8 Q When you initially made your investment, was your  
9 investment into Eufora, a limited liability corporation in  
10 Arizona?

11 A The only thing I knew was, that I found out later, was  
12 this Constantine Management Group is where my money originally  
13 went. When I first invested my \$100,000 it was Eufora.  
14 Whatever the name was irrelevant to me. Arizona, Delaware,  
15 Eufora, Constantine Management, I didn't pay attention to that  
16 part.

17 Q You were just interested in the fact that you wanted your  
18 interest, that you were paying for it to be reflected in some  
19 documentation?

20 A Some documentation connected to Eufora.

21 Q During direct and on cross by Mr. Haley you were shown  
22 two additional documents. Both the same. One was 764. And I  
23 believe this one is --

24 MR. HALEY: Kenner Exhibit 50.

25 Q -- Kenner Exhibit 50. They're the same exhibits, is that

NASH-CROSS-LaRUSSO

2023

1 correct?

2 A Yes.

3 Q Just to set a background for this, Mr. Nash, this is a  
4 document you received from Mr. Constantine, is that right?

5 A Yes.

6 Q Do you remember when you received this?

7 A I believe it was late -- it was 2000 -- it was long after  
8 all of 2008. It was a conversation that me and Tommy had that  
9 he didn't know where my money went. He couldn't recall it.  
10 He scared the heck out of me. So I went down to his office  
11 and we drew up this sheet. And it went from -- Constantine  
12 Management Group is where he found it, and he switched it over  
13 to Eufora LLC. And then he backdated it to April 24, 2008,  
14 when I originally wired the money in.

15 Q He did that in your presence, is that correct?

16 A Yes, he did.

17 Q When he backdated it, you didn't think there was anything  
18 wrong with that, did you?

19 A I don't know the law. If this is originally how it was  
20 supposed to be, then this is how it is supposed to be. I  
21 trusted Tommy.

22 Q In your discussions with Mr. Constantine regarding the  
23 document we're referring to, at this point did you also  
24 discuss that your -- it was originally held by AZ Eufora  
25 Partners along with other investors?

NASH-CROSS-LaRUSSO

2024

1 A I remember we had conversations about it. Again, the  
2 names are ridiculous. There are three or four of them. I  
3 thought it was Eufora. That's all I care about. I don't  
4 remember the conversations.

5 Q Do you remember any conversation with Mr. Constantine  
6 where he's telling you that Constantine Management Group, who  
7 owned these shares, was going to be the one that provided you  
8 the interest in Eufora that you had? Do you recall that?

9 A I remember, yes, kind of questioning what the heck is  
10 Constantine Management Group. We were starting to come  
11 together, I was like is that -- is that legit? Is that  
12 Eufora? Do I really own a piece of this? And he's telling  
13 me, I'm not sure where the money went. I'm calling him and  
14 freaking out. And then we found it. Like I said, we printed  
15 this sheet up.

16 Q This particular sheet is a representation of the interest  
17 that Mr. Constantine said you had made back in April of 2008,  
18 is that right?

19 A Yes.

20 Q By the way, when you were discussing this interest that  
21 you were receiving, did you recall saying that Mr. Kenner  
22 would be very angry that you were doing this?

23 A This was something concerning -- I don't remember the  
24 exact details, you know, I don't remember the exact details of  
25 the conversation.

NASH-CROSS-LaRUSSO

2025

1 Q Do you recall discussing with Mr. Constantine that you  
2 wanted the interest in your own name and not in the name of  
3 the corporation?

4 A Of my personal name, as in --

5 Q Yes.

6 A I would have thought the opposite, that I wanted it in my  
7 trust name.

8 Q As opposed to the name of the corporation, some other  
9 corporation holding your interest, do you remember that?

10 A Sorry. Can you repeat that? Are you asking me --

11 Q It's a little confusing. I understand.

12 A Did I want my signature on it representing myself  
13 personally or my signature representing my trust?

14 Q You made your original investment in Eufora through your  
15 trust, is that correct?

16 A I don't recall. I put everything in my trust, yes, for  
17 protection.

18 Q So when you were talking to Mr. Constantine at this point  
19 in time about getting documentation about the investment that  
20 you made, you were telling him that you wanted it put in the  
21 trust name, is that correct?

22 A That would have made sense, yes.

23 Q At the time you were talking with him, were you also  
24 discussing the fact that your shares were held in an entity  
25 with all of Kenner's other clients, other investors?

NASH-CROSS-LaRUSSO

2026

1 A Yes.

2 Q And you did not want to be part of all of the other  
3 investors. You wanted to have your own shares in the trust  
4 name.

5 A In a real company, yeah.

6 Q Do you remember Mr. Constantine having no problem in  
7 doing what you wanted done with the ownership interest that  
8 you had in Eufora at that point?

9 A Yes, he had no issue. I guess my only question was why  
10 wasn't it done like this in the beginning.

11 Q This is the first time that you spoke directly with  
12 Mr. Constantine and made that request, is that correct?

13 A I think I talked to him numerous times about paperwork  
14 and percentages and the actual percentage from the Global  
15 Settlement Fund.

16 Q At any point in time, did you make a request that you  
17 wanted documentation?

18 A Yes.

19 Q It was at this point in time that you made it and  
20 Mr. Constantine obliged you, is that correct?

21 A Yes.

22 Q I'm going to show you a couple of exhibits marked 101,  
23 102, and 103, and ask you if it refreshes you recollection to  
24 the time frame that this occurred. That's C-102 for  
25 identification. This is C-101. The last one is C-103.



NASH-CROSS-LaRUSSO

2027

1 (Hanging.)

2 Do you recall -- using those as possibly refreshing  
3 your recollection -- that sometime around October 2012 and  
4 November 2012 you are talking to Mr. Constantine about the  
5 ownership interest that you were receiving in the documents?

6 A I believe so.

7 Q Do those documents refresh your recollection that you  
8 initially had a hard time getting together and ultimately you  
9 did?

10 A Ultimately we did, yes.

11 Q By the way, when you finally received that interest, were  
12 you glad that you finally got the documentation that you  
13 requested of Mr. Constantine that he, in fact, gave you?

14 A Yes. As it says here, I said I trust you. I will own it  
15 like you and most everyone else, correct, in Eufora directly,  
16 question mark. That was my main concern.

17 Q By the way, do you remember at any point in time asking  
18 Mr. Constantine to show you further documentation that you had  
19 this interest in Eufora in your trust name?

20 A One more time.

21 Q Did Mr. Constantine and you ever discuss actually going  
22 on the Arizona Corporate Commission website to get proof that  
23 you, in fact, had the interest that was being provided to you  
24 by Mr. Constantine?

25 A I believe that happened, yes.

NASH-CROSS-LaRUSSO

2028

1 Q Let me show you what has been marked as Defendant's  
2 Exhibit C-50. Would you take a look at C-50, please.

3 (Hanging.)

4 Do you remember seeing a document similar to this?

5 A I believe I saw it on the computer, yes.

6 Q This is from the Arizona Corporate Commission.

7 A Yes.

8 Q It was shown to you on the computer at the time you were  
9 discussing the investment that you had finally got documented  
10 by Mr. Constantine, is that right?

11 A Yes.

12 MR. LaRUSSO: Your Honor, I ask that C-50 be  
13 received at this time.

14 MS. KOMATIREDDY: Objection.

15 THE COURT: Overruled.

16 Any objection, Mr. Haley?

17 MR. HALEY: No, sir.

18 THE COURT: C-50 is admitted.

19 (So marked as Defendant's Exhibit C-50 in evidence.)

20 Q That's the Arizona Corporate Commission website,  
21 highlighted Eufora LLC. The date of this document is -- well,  
22 the date this is printed out is 5/10/2015. Turning to page 3,  
23 highlighted, Mr. Nash, that is the ownership interest we were  
24 talking about. Is that correct, Mr. Nash?

25 THE COURT: It's blurry. He can't see it.

NASH-CROSS-LaRUSSO

2029

1 Q Do you see that that is the ownership interest reflected  
2 in this document? Is that right?

3 A Yes.

4 Q By the way, do you recall at the shareholders meeting  
5 Mr. Berard and Mr. Constantine actually discussing that the  
6 players wanted to buy the Neptune loan as opposed to the other  
7 investors?

8 A I don't recall whether that came up.

9 Q Do you remember any discussion about Mr. Berard and the  
10 other players looking to buy a loan, a loan that Eufora had  
11 from a company called Neptune?

12 A Is that with the hangar? Is that the hangar?

13 Q Just your best recollection. I can't say that.

14 A I don't recall.

15 Q You don't recall any discussion about the Eufora loan  
16 during the shareholders meeting?

17 A I remember the Eufora loan and the company owing money,  
18 and I don't know what Neptune means.

19 Q What do you recall about the loan? What is your  
20 recollection?

21 A Again, I don't know a lot of the details of the overall  
22 company. I wasn't there on a day-to-day basis like Tommy. I  
23 asked questions of Tommy, he answered. I knew that there was  
24 an outstanding debt that needed to be paid.

25 Q You don't have any recollection of the hockey players or

NASH-CROSS-LaRUSSO

2030

1 any of the clients trying to buy Eufora, to try to take over  
2 the company?

3 A I don't recall.

4 MR. LaRUSSO: One moment, Your Honor.

5 Q Mr. Nash, just one more question. I believe that you  
6 mentioned that --

7 MR. LaRUSSO: One moment, Your Honor.

8 (Whereupon Mr. LaRusso confers with his client.)

9 Let me find one more exhibit, Your Honor and we will  
10 be done.

11 THE COURT: Yes.

12 (Pause in proceeding.)

13 MR. LaRUSSO: Thank you, Your Honor, for your  
14 indulgence.

15 Q Mr. Nash, I'm going to show you one other document marked  
16 for identification as C-123. Do you recognize that as an  
17 e-mail from Mr. Constantine to you dated November 21, 2012?  
18 Take a look at it, please.

19 (Hanging.)

20 A Yes.

21 Q You recognize that as an e-mail between you and  
22 Mr. Constantine?

23 A I do.

24 Q Regarding the shares in Eufora that we were discussing?

25 A Yes.

NASH-CROSS-LaRUSSO

2031

1 MR. LaRUSSO: Your Honor, I ask that it be received  
2 at this time as Defendant's Exhibit C-123.

3 MS. KOMATIREDDY: Objection.

4 THE COURT: Any objection?

5 MR. HALEY: No, sir.

6 THE COURT: Overruled. I will explain it at the  
7 lunch break.

8 (So marked as Defendant Exhibit C-123 in evidence.)

9 MR. LaRUSSO: I will publish it to the jury and then  
10 I'll be done, Your Honor.

11 Q It is an e-mail dated November 21, 2012, from  
12 Mr. Constantine to you, Mr. Nash. The upper e-mail portion is  
13 November 21st at 2:48. There are a string of e-mails. And I  
14 will start at the bottom, if I may.

15 This is Mr. Constantine at 1:21. In today's Wall  
16 Street Journal, a pdf attached from Tommy Constantine, "Re:  
17 For credit invisibles a market takes shape."

18 You then respond back on the same date at 2:04 --  
19 I'm sorry -- 2:10. "Yeah" -- sorry. The string of e-mail is  
20 November 21st at 2:04. "You mean the global deal, not CMG?"  
21 Do you see that?

22 A Yes.

23 Q The next e-mail is from you, "Ya, ya. Sorry. Thanks,  
24 Tyson."

25 Then Mr. Constantine's last remark at 2:48. "I

NASH-CROSS-LaRUSSO

2032

1 don't know the answer to that, but I suspect that this can  
2 only happen when everyone who participated in it gets together  
3 and decides how the money is to be treated (debt or equity)  
4 and what the terms are. This has been a problem since  
5 everything became adversarial instead of all of us working  
6 together. I don't know what I'm supposed to do. I can't do  
7 it for some and not for others. Everyone has to agree. I  
8 don't even know who I'm supposed to talk about how that money  
9 should be treated. So at this point I guess ALL (all meaning  
10 those with money actually involved) get in a room and decide  
11 or we let the lawyers continue to handle it. Keep in mind,  
12 most of the guys involved (through their ownership of AZ  
13 Eufora Partners) are being sued by us because of the lawsuit  
14 they filed against us which was dismissed. So it's a very  
15 difficult environment to get anything done until all of this  
16 stuff gets sorted out. The good news is the money has been  
17 recorded and has been on the books since day one and no one is  
18 trying to take advantage of anyone as has been suggested."

19 What did you understand Mr. Constantine to be  
20 telling you at that point with regard to this money?

21 A Can you go up to my original question?

22 Q Just tell me. Make sure I displayed it for you.

23 A So I'm asking any idea whether it will be paid out for  
24 the extra Eufora money from CMG. Is that supposed to say CMG  
25 or Global Settlement Fund?

NASH-REDIRECT-KOMATIREDDY

2033

1 Q CMG is Constantine Management Group. You are correct,  
2 the Global Settlement Fund.

3 A That's supposed to say Global Settlement Fund?

4 Q What is your understanding? I can't tell you.

5 A Yes. If it's from the Global Settlement Fund. We're  
6 talking about the extra percentage that I received, right, and  
7 when we would get money.

8 Q That's what Mr. Constantine's referring to here, is that  
9 correct?

10 A Yes.

11 MR. LaRUSSO: Thank you.

12 Your Honor, no further questions.

13 THE COURT: Any redirect?

14 REDIRECT EXAMINATION

15 BY MS. KOMATIREDDY:

16 Q Mr. Nash, I want to take you back to Hawaii. How much  
17 did you invest in Hawaii?

18 A \$100,000.

19 Q Now, you were asked about a \$6 million loan that went to  
20 Mr. Ken Jowdy, correct?

21 A Yes.

22 Q What's your basis of knowledge for anything about a loan  
23 that went to Kenneth Jowdy?

24 A Phil Kenner.

25 Q Did you learn any information about any loan from any

NASH-REDIRECT-KOMATIREDDY

2034

1 other source?

2 A No.

3 Q \$6 million is more than \$100,000, right?

4 A Yes.

5 Q So any loan would have included money far beyond what you  
6 contributed to Hawaii?

7 A Yes.

8 Q Did you know the terms under which other hockey players  
9 contributed money to Hawaii?

10 A No.

11 Q Do you know what Phil Kenner told them about their money  
12 in Hawaii?

13 A From what he told me.

14 Q But do you know?

15 A No.

16 Q Do you have a line of credit at Northern Trust Bank?

17 A No, I don't.

18 Q On cross-examination you were asked about the lawsuits  
19 against Kenneth Jowdy and whether efforts were being made to  
20 move forward with the lawsuits.

21 A Right.

22 Q To the extent you know of any efforts being made to move  
23 forward against Kenneth Jowdy, where does that information  
24 come from?

25 A Originally it was Phil Kenner.



NASH-REDIRECT-KOMATIREDDY

2035

1 Q And then?

2 A And now it's another lawyer that's been hired to continue  
3 the fight.

4 Q During the period of time between 2005 when you invested  
5 in Hawaii and 2009 and 2010, where did all of your information  
6 about Ken Jowdy come from?

7 A Phil Kenner.

8 Q Do you actually have any personal knowledge of the  
9 efforts that Phil Kenner took to fight on your behalf?

10 A I do.

11 Q Based on what he told you?

12 A Based on what he told me, yes.

13 Q Now, you were also asked if the portfolio Mr. Kenner set  
14 up for you is still working today. Do you remember that  
15 question?

16 A Yes.

17 Q How about Eufora, have you ever gotten anything back from  
18 Eufora?

19 A No.

20 Q Have you ever gotten anything back from when you put  
21 money into the Global Settlement Fund?

22 A No.

23 Q Did those investments work in any way?

24 A Not to this point, no.

25 Q Now, discussing your April 2008 contribution -- I'm

NASH-REDIRECT-KOMATIREDDY

2036

1   sorry -- investment in Eufora, you were asked on  
2   cross-examination about whether it's important to you how your  
3   money was used. Do you remember that question?

4   A     Right.

5   Q     Remember yesterday when I showed you the bank record,  
6   Government Exhibit 1706?

7   A     Yes.

8   Q     Do you remember seeing your money go to Wampler Buchanan  
9   for Phil Kenner?

10   A     Yes.

11   Q     Remember \$17,000 in cash going to Phil Kenner?

12                 MR. LaRUSSO: Your Honor, this is beyond the scope.  
13   It was asked and answered already.

14                 THE COURT: You can answer that.

15   A     I remember seeing that, yes.

16   Q     Was that the first time you saw that yesterday?

17   A     Yes.

18   Q     Are you okay with that?

19                 MR. HALEY: Objection.

20                 THE COURT: Sustained.

21   Q     Is that how you authorized your money to be used?

22   A     No.

23   Q     Would it have been important to you, when you decided to  
24   invest in Eufora, to know whether your money would be going  
25   into the pockets of Constantine and Kenner instead of the

NASH-REDIRECT-KOMATIREDDY

2037

1 business?

2 A I wish I would have done everything different up to this  
3 point, obviously. I said I never received any money from any  
4 of the investments that I made. I wish I would have followed  
5 it a lot closer.

6 Q Would it have been important to you for them to tell you  
7 that?

8 A Yes.

9 Q You were shown the transfer membership document. This is  
10 in front of you. The transfer of Constantine Management Group  
11 to your trust. Do you remember that?

12 A The backdated document?

13 Q The backdated document.

14 A Yes.

15 Q You were asked on cross-examination whether  
16 Mr. Constantine regularly gave you documentation with respect  
17 to your involvement in Eufora, correct?

18 A Correct.

19 Q That document -- actually, specifically, I believe you  
20 testified that you had a phone conversation with him.  
21 Constantine wasn't sure where the money went. You were  
22 freaking out. And then he found it, right?

23 A Yes.

24 Q Did he find the cash?

25 A He found where the money went.

NASH-REDIRECT-KOMATIREDDY

2038

1 Q He found where the money went. And then you went to his  
2 office and sat down with him?

3 A I believe that's the way it happened.

4 Q In his office, did he sit there and offer you the money  
5 back?

6 A No.

7 Q He gave you that one-page document, right?

8 A Yes.

9 Q He drew it up right there, printed it out, and backdated  
10 it and signed it?

11 A Yes.

12 Q Do you even know if Constantine Management Group owned an  
13 interest in Eufora in 2008?

14 A I don't recall. I don't know.

15 Q Do you know if it owned an interest in Eufora in 2012?

16 A No. Again, I thought I owned Eufora. And the names were  
17 irrelevant to me. I just wanted to own it like Tommy owned  
18 it, as I stated, for tax purposes.

19 Q Looking at this website that they just showed you,  
20 Constantine 50.

21 (Hanging.)

22 Look at that list of members. Is Constantine  
23 Management Group in that list.

24 A No.

25 Q Let's turn to the Global Settlement Fund. I want to talk

NASH-REDIRECT-KOMATIREDDY

2039

1 about the plane for a minute. You were asked on  
2 cross-examination about whether there were several airplanes  
3 or just a Falcon. You testified you only knew about the  
4 Falcon, correct?

5 A Right.

6 Q I believe you -- you knew about the Falcon, and you  
7 thought it was associated with Joe Juneau, right?

8 A Right.

9 Q So as far as you're concerned, any interest you were  
10 getting in the Falcon was coming out of the settlement with  
11 Joe Juneau.

12 A That's right.

13 Q And then you talked about Government Exhibit 767, the  
14 spreadsheet. I'm going to just focus on a couple of entries  
15 here. Can you see that, Mr. Nash?

16 A Yes.

17 Q Do you see the entry on 6/2/2009? It says Edenhom Motor  
18 Sports.

19 A Yes.

20 Q \$450,000 goes out.

21 A Right.

22 Q It says Cessna 414 purchased, right? Next to the balance  
23 there on the right side.

24 A Yes.

25 Q Cessna 414 purchased Juneau settlement, correct?

NASH-REDIRECT-KOMATIREDDY

2040

1 A Right.

2 Q Did you authorization any of your money in the Global  
3 Settlement Fund to be used for a Cessna instead of a Falcon?

4 A Again, I don't remember -- I just remember that we  
5 were -- -- from my recollection, to this day, I just remember  
6 the Falcon.

7 Q Okay. Let me ask you this. As a result of that Juneau  
8 settlement, did you get any interest in a Cessna 414?

9 A I thought it was a Falcon.

10 Q You said on cross-examination you went and actually saw a  
11 Falcon, right?

12 A Yes.

13 Q Tommy showed it to you?

14 A Yes.

15 Q Did Tommy ever show you a Cessna 414?

16 A I don't believe so. I don't know anything about  
17 airplanes. It could have been. I don't know. I wouldn't  
18 know what kind it was. I don't know if it was a Falcon or a  
19 Cessna or -- I was guessing it was a Falcon. It was always  
20 referred to me as the Falcon.

21 Q You saw one plane, right?

22 A Yes.

23 Q You didn't see three planes?

24 A No.

25 Q So the Metro Receiver, the next entry here, \$415,000 goes

NASH-REDIRECT-KOMATIREDDY

2041

1 out and the notation, "Falcon and Metro Receiver." Do you see  
2 that?

3 A Yes.

4 Q Did Mr. Kenner ever explain to you that your money in the  
5 Global Settlement Fund would be going to another airplane, a  
6 Metro Receiver?

7 A Is that the Falcon?

8 Q A good question.

9 All right. Now, you also testified about  
10 Mr. Constantine e-mailing you about something with respect to  
11 a conflict, and you testified we were very close to solving  
12 Diamante. Again, in this time period, all of your knowledge  
13 with respect to how close you were to solving Diamante, where  
14 did that information come from?

15 A At that point it came from the group that went down to  
16 California for the mediation. Phil Kenner, Tommy Constantine  
17 now at this time.

18 Q Did you actually ever solve Diamante?

19 A No.

20 Q Did you get anything back from your contribution to the  
21 Global Settlement Fund?

22 A No.

23 Q Finally, you were asked on cross-examination about  
24 whether the GSF was for a broad purpose. I think you were  
25 asked about various lawsuits. So I just want to make sure

NASH-REDIRECT-KOMATIREDDY

2042

1 we're specific here. You also were asked about a moment where  
2 you went to Mr. Constantine's office. He talked to you, on a  
3 whiteboard, about how the money was used, right?

4 A Correct.

5 Q Leaving that conversation that day, did he say anything  
6 about whether there was any money left in the GSF?

7 A I don't think there was much -- much left. I can't  
8 recall how it finished. I know there was a lot of  
9 conversation within the group about the Global Settlement  
10 Fund. I left his office feeling okay with what he said  
11 happened to the money.

12 Q In that conversation in his office, did he tell you that  
13 he used your money to go pay for some race cars?

14 A I don't believe so.

15 Q Did he tell you that he used your money to pay for his  
16 rent?

17 A No.

18 Q Did he tell you that he used your money to pay for his  
19 personal lawyers in a lawsuit in Florida?

20 A No.

21 Q Did he tell you that he used your money to pay -- to try  
22 to buy Playboy Enterprises for him and some other guys?

23 A No.

24 MS. KOMATIREDDY: No further questions.

25 THE COURT: Anything further?



NASH-RE CROSS-HALEY

2043

1 MR. HALEY: Briefly, Judge.

2 RE CROSS EXAMINATION

3 BY MR. HALEY:

4 Q Mr. Nash, you were asked a moment ago about the mediation  
5 in California. Do you recall that question?

6 A Yes.

7 Q Now, you did not attend that mediation, is that true?

8 A No, I did not.

9 Q But your wife Cathy did attend that mediation, is that  
10 correct?

11 A That's correct.

12 Q To your knowledge, present at that mediation was Ken  
13 Jowdy, as well as his attorney, Tom Harvey, is that correct?

14 A Yes.

15 Q Well, is it fair to say, sir, that the information that  
16 Phil Kenner was providing to you with reference to Ken Jowdy  
17 and business disputes between himself and Ken Jowdy had direct  
18 relevance to that mediation, did it not?

19 A As far as Diamante?

20 Q Yes.

21 A I'm sorry. Can you ask the question again?

22 Q Sure. You know, through your own personal knowledge,  
23 that Ken Jowdy, along with an attorney by the name of Tom  
24 Harvey, attended a mediation in California where your wife  
25 attended, isn't that true?

NASH-RE CROSS - LaRUSSO

2044

1 A Yes.

2 Q At that point in time, the information that you had  
3 available to you in connection with disputes involving Ken  
4 Jowdy, came from Phil Kenner and other sources, yes or no?

5 A Yes.

6 Q Now, we can agree that the results of that mediation, it  
7 was unsuccessful, to your knowledge, correct?

8 A Right.

9 Q Sir, when you invested, when you sought an ownership  
10 interest in Eufora for your \$100,000, you understood at the  
11 time that Eufora was a privately held company, is that  
12 correct, as opposed to a publically held company like Apple or  
13 Microsoft? You understood that?

14 A Yes.

15 Q Did you or did you not, sir, have an understanding at  
16 that point in time that Tommy Constantine was one of the  
17 members/owners of Eufora?

18 A Yes.

19 MR. HALEY: Thank you.

20 I have no further questions.

21 MR. LaRUSSO: A few questions.

22 RE CROSS EXAMINATION

23 BY MR. LaRUSSO:

24 Q You remember on redirect being asked, did Mr. Constantine  
25 give you your money back, and you said no? Do you recall that

NASH-RE CROSS - LaRUSSO

2045

1 a few moments ago?

2 A When he gave me my interest in Eufora?

3 Q Yes. Is it a fact you never asked for your money back?

4 A I don't fully remember that. I can't recall.

5 Q Mr. Nash, isn't it also true that you never really asked  
6 for any documentation from Mr. Constantine until 2012 when you  
7 received that document signed by Mr. Constantine on your  
8 behalf? Do you recall that?

9 A I find that real hard to believe. Again, I stated here  
10 that the main reason why we're here is documentation and  
11 signatures and missing signatures. So I was pretty adamant  
12 that I wanted documentation to show at least I own the  
13 company, it was apparently worth this amount of money. I  
14 wanted that in my file.

15 Q In 2012 when you asked Mr. Constantine for the  
16 documentation, there was no hesitation on his part. He gave  
17 it to you, is that correct?

18 A He always told me he was getting it together, he was  
19 putting it together.

20 Q In this particular instance, he gave it to you in the  
21 name of the trust, which is what you wanted, is that correct?

22 A That would make sense.

23 Q By the way, in regard to the Global Settlement Fund, do  
24 you remember Mr. Constantine ever telling you that he put his  
25 own money into the Ron Richards account?

NASH-RE CROSS - LaRUSSO

2046

1 A In the Global Settlement Fund?

2 Q No. In the Ron Richards account, where you sent your  
3 money.

4 A You're referring to the Global Settlement Fund?

5 Q Yes, hat's correct, Mr. Nash.

6 A Yes. I thought that they might both have put money into  
7 it, the Global Settlement Fund.

8 Q So Mr. Kenner and Mr. Constantine --

9 A Yes.

10 Q I believe on redirect you also testified, and now there's  
11 another lawyer hired to continue the fight. What did you mean  
12 by that?

13 A Meaning, it seemed like we had ten lawyers and ten  
14 lawsuits going at the same time. That's it.

15 Q What time frame are we talking about?

16 A From the moment I started investing it seemed like it was  
17 investment/lawsuit, investment/lawsuit, investment/lawsuit.

18 Q Just directing you to one more topic. On redirect you  
19 were asked a number of questions regarding the Falcon  
20 airplane, Mr. Jowdy, Mr. Juneau. Do you remember that?

21 A Yes.

22 Q That was in response to questions that I asked you. Is  
23 it possible, Mr. Nash, that when I said Juneau and the Falcon  
24 I meant Jowdy and the Falcon?

25 MS. KOMATIREDDY: Objection.

NASH-RE CROSS - LaRUSSO

2047

1 THE COURT: Sustained as to form.

2 Q By the way, the Global Settlement Fund bought the Falcon,  
3 is that correct, as far as you know?

4 A Bought the Falcon, I don't recall. Again, I thought the  
5 Falcon was already in play. I thought I was getting a  
6 percentage of the Falcon. I don't remember that we actually  
7 bought it.

8 Again, I just want to be really clear with the  
9 Global Settlement Fund. I was banking on Diamante and Eufora.  
10 That's how it was sold to me. And mainly Eufora. According  
11 to Tommy, his evaluation. It was going to sell. He showed me  
12 e-mails of this thing. And people were asking about it and  
13 wanting to buy it for X amount of millions of dollars. I  
14 didn't care about any of this other stuff. I didn't focus on  
15 it. I'm sorry. I wish I had a clear idea on it, but I don't.

16 Q You had an opportunity at that time to ask the questions  
17 that you wanted to ask. And you didn't ask, is that correct?

18 MS. KOMATIREDDY: Objection.

19 THE COURT: Overruled. You can answer that.

20 A I had an opportunity, yeah. I wish I had.

21 MR. LaRUSSO: No further questions, Your Honor.

22 THE COURT: You can step down, Mr. Nash. Thank you.  
23 (Witness excused.)

24 THE COURT: I appreciate everybody staying a little  
25 bit later so we can finish Mr. Nash. I'm just going to ask

NASH-RE CROSS - LaRUSSO

2048

1 that we will take a little bit shorter lunch break today. The  
2 next witness is from California. I really want to avoid him  
3 having to come back on Monday. So if we can come back at  
4 2:00, hopefully we can conclude him.

5 Don't discuss the case. Have a good lunch.

6 (Whereupon the jury leaves the courtroom at 1:10  
7 p.m.)

8 A JUROR: Your Honor, the light on the podium is  
9 very bright. It's hard to watch him.

10 THE COURT: I'm sorry about that. We'll fix that.  
11 Let's be back at 2:00.

12 MR. MISKIEWICZ: Yes, Your Honor.

13 (Whereupon a luncheon recess was taken at 1:11 p.m.)  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

2049

A F T E R N O O N      S E S S I O N

(Out of the presence of the jury)

THE COURT: Ready to go?

MR. MISKIEWICZ: Yes.

THE COURT: Bring in the jury.

(Whereupon, the jury at this time enters the courtroom.)

THE COURT: Please proceed.

Okay. The Government calls its next witness.

MR. MISKIEWICZ: The Government calls Owen Nolan.

THE COURT: Mr. Nolan, why don't you come up to the witness stand and remain standing while we place you under oath.

THE CLERK: Please raise your right hand.

**O W E N    N O L A N,**

called as a witness, having been first duly sworn, was examined and testified as follows:

THE WITNESS: Owen N-O-L-A-N.

THE COURT: Be seated, Mr. Nolan.

Pull your chair up close to the mike and keep your voice up. Go ahead, Mr. Miskiewicz.

MR. MISKIEWICZ: Thank you, your Honor.

**Nolan - Direct/Miskiewicz**

2050

1 DIRECT EXAMINATION

2 BY MR. MISKIEWICZ:

3 Q Good afternoon, Mr. Nolan. What state do you live  
4 in, Mr. Nolan?

5 A California.

6 Q What do you do for a living?

7 A Retired hockey player.

8 Q Were you a professional hockey player?

9 A Yes.

10 Q When did you start playing hockey?

11 A Professional in 1990.

12 Q And how old were you in 1990 when you started?

13 A 18.

14 Q How far along in formal schooling did you go before  
15 you were drafted into hockey?

16 A I was drafted in high school.

17 Q When you say professional hockey, you mean the  
18 National Hockey League, the NHL?

19 A Yes.

20 Q What teams did you before you were a professional  
21 hockey player?

22 A Quebec, Colorado, San Jose, Phoenix, Toronto,  
23 Calgary, Minnesota.

24 Q What was the last year that you played  
25 professionally?



Nolan - Direct/Miskiewicz

2051

1 A I believe it was '08.

2 Q When you joined the NHL -- and did you have a  
3 contract your first year?

4 A Yes.

5 Q Did you seek advice from any individual about how to  
6 manage the money that you got as a professional athlete?

7 A No.

8 Q I'm sorry?

9 A Not right away, no.

10 Q Did there come a time that you sought professional  
11 advice?

12 A Yes.

13 Q And briefly, where did you go?

14 A At my agent's recommendation, someone in Canada.

15 Q Did you stay with that person in Canada for some  
16 period of time?

17 A No.

18 Q Did you change to a different person?

19 A Yes.

20 Q And who did you switch to?

21 A Phil Kenner.

22 Q And do you recall approximately what year you met  
23 Mr. Kenner?

24 A I believe around 2000.

25 Q Okay. How -- first of all what team and what city

Nolan - Direct/Miskiewicz

2052

1 were you based out of at that point in 2000?

2 A San Jose, California.

3 Q Okay. And you still live in San Jose, California  
4 now?

5 A Yes.

6 Q How did you come to meet Mr. Kenner?

7 A A few of the other players on the team had him and  
8 through conversations we got to talking and eventually set  
9 up a meeting.

10 Q Do you remember who those people were, your teammates  
11 were who recommended him?

12 A May have been Sean Donovan and Jeff Friesen.

13 Q And when you were looking for a financial advisor,  
14 what were you looking for?

15 A Someone to help manage my money and make it grow and  
16 look after me.

17 Q And how long did you play in the NHL? How many  
18 years?

19 A 18.

20 Q So when you met Mr. Kenner, you were already more  
21 than halfway through your career, is that accurate?

22 A Yes.

23 Q Would you recognize -- did you meet Mr. Kenner  
24 face-to-face?

25 A When?

Nolan - Direct/Miskiewicz

2053

1 Q At any time? Did you meet with Mr. Kenner?

2 A Yes.

3 Q Okay. And would you recognize him if you saw him  
4 again?

5 A Yes.

6 Q Would you look around the courtroom and see if you  
7 can identify him?

8 MR. HALEY: Your Honor, my client is standing so  
9 it is okay.

10 THE COURT: Yes, identification has been  
11 conceded.

12 Q During the period of time that Mr. Kenner was your  
13 financial advisor, how frequently would you have meetings  
14 with him, let's say, face-to-face?

15 A Maybe once or twice a year.

16 Q What about by telephone or -- let's do one at a time.

17 What about by telephone? How frequently, if at  
18 all, would you talk to Mr. Kenner about your finances by  
19 telephone?

20 A Uhm, it would vary. Sometimes he would be easy to  
21 get a hold of; many times it would be difficult. So,  
22 sorry, I can't give you an exact number.

23 MR. MISKIEWICZ: Mr. Nolan, I'll ask you again.  
24 Maybe if you can move the mike closer to you, this way you  
25 are not buttoned up again the bench there.

**Nolan - Direct/Miskiewicz**

2054

1                   What about e-mails or texts? Did you  
2                   communicate with Mr. Kenner by e-mails or texts?

3           A     At times, yes.

4           Q     How frequently would that happen?

5           A     Uhm, it's tough to say. It wasn't as often as I now  
6                   know it should have been.

7           Q     Now, when you hired Mr. Kenner, you did hire him or  
8                   engage in as a financial planner?

9           A     Yes.

10          Q     Did you have some sort of an arrangement for which  
11                 you would pay him for his services?

12         A     Yes.

13         Q     And do you recall how did that arrangement take  
14                 place. How would you pay him, in other words?

15         A     I believe it was a percentage, but I can't be  
16                 accurate on numbers right now.

17         Q     But a percentage of what?

18         A     My overall portfolio.

19         Q     Do you remember if would you pay him weekly, monthly,  
20                 quarterly? How did that work?

21         A     I believe it was quarterly.

22         Q     You said you had a portfolio. Where was your  
23                 portfolio at this time, talking about 2000 or the early  
24                 2000s?

25         A     I believe Charles Schwab.

**Nolan - Direct/Miskiewicz**

2055

1 Q What kinds of investments did you have in Charles  
2 Schwab that would be managed by Mr. Kenner?

3 A At the time it was stocks.

4 Q And did you select the stocks; did he select the  
5 stocks? How did that work?

6 A It was on his recommendation.

7 Q Okay. Was it something that you all talked about?

8 A I don't recall.

9 Q All right. Did there come a time that aside from  
10 stocks and -- through Charles Schwab, that you invested in  
11 other kinds of business ventures?

12 A Yes.

13 Q And were those other investments done in consultation  
14 with or at the recommendation of Mr. Kenner?

15 A Yes.

16 Q Both. In other words, talking about it, consulting,  
17 and did he make specific recommendations?

18 A He would present a company to us or whatever it may  
19 have been and that's how it started.

20 Q Okay. When you say he would bring a recommendation  
21 to us, when you say us, who are you talking about?

22 A My family.

23 Q Is it fair to say this portfolio, what you had saved  
24 from the NHL, was important to you?

25 A Certainly.

Nolan - Direct/Miskiewicz

2056

1 Q Why?

2 A You know a career in the NHL, a career in the NHL is  
3 a great life but at some point it has to come to an end  
4 and you want to be set for retirement.

5 Q And is it fair to say that the money that you made  
6 while being a professional athlete was not likely to  
7 continue after you retired, in other words, that you would  
8 run out of money?

9 A No.

10 Q Are you familiar with the name of a company called  
11 Eufora?

12 A Yes.

13 Q Did you ever have any discussions with Mr. Kenner  
14 about Eufora?

15 A Yes.

16 Q What, if anything, did Mr. Kenner tell but the  
17 company Eufora?

18 A It was a credit card company.

19 Q A credit card company?

20 A Yes.

21 Q Anything else?

22 A There was a great opportunity to get into, be a smart  
23 investment to be a part of, and I agreed and went along  
24 with him.

25 Q At that point did you meet a man by the name of Tommy

Nolan - Direct/Miskiewicz

2057

1 Constantine?

2 A I don't recall meeting Tommy.

3 Q Did you ever meet a man by the name of Tommy  
4 Constantine?

5 A I think I may have briefly.

6 Q Where would that have been?

7 A In Arizona.

8 Q And would it have been under what circumstances did  
9 you meet?

10 A It wasn't for business, it was just social that we  
11 are there, at a restaurant.

12 Q At the time you made your investment in Eufora,  
13 whenever that was, did the name Tommy Constantine come up?

14 A It may have. I don't recall.

15 Q Okay. Other than what Mr. Kenner told you about  
16 Eufora, did you have any other information about this  
17 company?

18 A No.

19 Q Did you have any idea who was running the company at  
20 that time?

21 A No.

22 Q Do you recall when you made your first investment in  
23 Eufora?

24 A I don't recall the year.

25 Q I show you what is marked for identification as

**Nolan - Direct/Miskiewicz**

2058

1 Government's Exhibit ON-1.

2 Mr. Nolan, I will show you what has been marked  
3 as ON-1. Look at the portion of that that has been  
4 highlighted and see if that refreshes your recollection  
5 and then I'll ask you some questions.

6 A It seems to be about the right time but I couldn't  
7 say for sure.

8 Q Okay. So whether or not that refreshes your  
9 recollection, do you have any approximation of the year  
10 that you first invested in Eufora?

11 A Looking at this, if it is correct, in '03.

12 Q 2003?

13 A Yes.

14 Q Did you make one, well, let me withdraw that.

15 How much did you invest? Do you recall that?

16 A Originally it was 100,000.

17 Q And when you invested \$100,000 in Eufora, was that a  
18 loan or were you investing in the company or was there  
19 some other benefit that you intended to get?

20 A I believe that it was shares in the company.

21 Q Was that based on your conversations with Mr. Kenner  
22 or somebody else?

23 A With Mr. Kenner.

24 Q After you invested \$100,000, did you invest any more  
25 in Eufora?



Nolan - Direct/Miskiewicz

2059

1 A Yes, I put in an additional 100,000 in. I wanted to  
2 help my family and my wife's family out.

3 Q So what was the purpose of -- when you say your  
4 family and your wife's family, you put in 100,000 in  
5 Eufora to get what in return?

6 A I put an additional \$100,000 into getting some shares  
7 for my wife's family and brothers.

8 Q And do you recall how soon after your first  
9 investment did you make that second investment?

10 A I don't think it was much longer.

11 Q You said you made your first investment in the year  
12 2003. Let's focus on Christmas 2003. Do you know whether  
13 or not the second \$200,000 was made -- the second \$200,000  
14 investment was made before or after Christmas 2003?

15 MR. HALEY: Judge, I apologize. Is it \$100,000  
16 or \$200,000 investment? I apologize.

17 THE WITNESS: \$200,000 total.

18 MR. HALEY: \$200,000, total?

19 THE WITNESS: The second hundred thousand was  
20 before Christmas.

21 Q Did you intend to make that additional investment and  
22 get those stocks backs from Eufora? What did you intend  
23 to do the with stock certificates or whatever you were  
24 going to get that Christmas?

25 A I wanted to present it to my family for a Christmas

Nolan - Direct/Miskiewicz

2060

1 gift.

2 Q Did you?

3 A No.

4 Q Why not?

5 A Didn't get the proper paperwork or any paperwork to  
6 present to them for Christmas so I eventually on the  
7 recommendation of Phil, just put a note in an envelope and  
8 passed it out for Christmas.

9 Q Now, you said on the recommendation of Phil, you mean  
10 Mr. Kenner?

11 A Yes.

12 Q Did you ask anybody for a stock certificate or some  
13 kind of documentation showing your family, your brothers  
14 now owned a percentage of Eufora, thanks to your  
15 investment?

16 A I did ask for certificates, paperwork, whatever the  
17 proper paperwork was.

18 Q And was that in person or by phone?

19 A I don't recall how I asked.

20 Q What, if anything, did Mr. Kenner tell you when you  
21 asked for certificates or proper paperwork?

22 A He thought it was a better idea that he held on to  
23 them and it would be better if I just wrote a note, put it  
24 in an envelope, and present it that way for Christmas.

25 Q So did he in essence tell you that he had the stock

Nolan - Direct/Miskiewicz

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1 certificates?

2 MR. HALEY: Well, Judge, I object.

3 THE COURT: Sustained.

4 MR. MISKIEWICZ: I'll withdraw that.

5 Q So did you have any understanding whether there were  
6 stock certificates in your name or in the name of your  
7 family at that point?

8 A I believe that he had paperwork and that he was  
9 holding it for us.

10 Q After Christmas of 2003, did you at any point later  
11 ask for paperwork reflecting both your ownership and your  
12 family's ownership in Eufora?

13 A Yes.

14 Q And who did you ask?

15 A I asked Phil Kenner.

16 Q And did you ask once or more than once?

17 A I asked several times.

18 Q And what, if anything, did Mr. Kenner tell you when  
19 you asked?

20 A I don't recall the specific reason but by the end of  
21 it, I was at ease and felt comfortable that everything was  
22 okay.

23 Q Okay. So you don't remember what he told you?

24 A Not specifically, no.

25 Q But you felt at ease?

Nolan - Direct/Miskiewicz

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1 A Yes.

2 Q Did there come a time when you were no longer at ease  
3 with questions you had posed to Mr. Kenner?

4 A Yes.

5 Q And approximately what year is that?

6 A I believe it was 2006, roughly, 2007, maybe.

7 Q Did that have anything to do with documentation or  
8 lack of documentation that you were getting?

9 A Yes, we made several phone calls, couldn't get return  
10 phone calls, just looking for any type of paperwork to  
11 show that we were part of something that we invested in  
12 it. It was a lot of song and dances. I mean the guys  
13 really need to sell sand on the beach and the conversation  
14 -- I felt at ease having a conversation with him -- very  
15 naive on my part, but I had no reason not to believe him.

16 Q You liked Mr. Kenner, didn't you?

17 A Yes, very much.

18 Q Aside from being a business client of his, would you  
19 say that from time to time you would be willing to  
20 socialize with him?

21 A Absolutely. Considered him a great friend, almost  
22 like a brother.

23 Q You trusted him?

24 A Very much.

25 Q And at some point you sued him, right?

Nolan - Direct/Miskiewicz

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1 A Yes.

2 Q And that ended up in what is called an arbitration?

3 A Yes.

4 Q And you testified in an arbitration, right?

5 A Yes.

6 Q And among the things covered in the arbitration was  
7 Eufora?

8 A Yes.

9 Q Did there come a time that you ever had any  
10 discussions with Mr. Kenner about investing in a land deal  
11 or project in Hawaii?

12 A Yes.

13 Q Do you remember approximately when that was -- let me  
14 withdraw the question.

15 Was it before or after you invested in Eufora?

16 A After.

17 Q Okay. Could it have been in 2004 or 2005 or later?

18 A Maybe 2005? I'm guessing right now. I don't  
19 specifically remember the year.

20 Q Okay. Is it fair enough to say if I asked you for  
21 your wife's birth date, you would have trouble remembering  
22 the date?

23 A Yes, I do forget that one.

24 Q And other special days?

25 A Yes.

Nolan - Direct/Miskiewicz

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1 Q So whenever it was, whatever year it was, do you have  
2 a recollection whether or not if you invested in this  
3 Hawaii land deal?

4 A Yes.

5 Q How much?

6 A 100,000.

7 Q And what, if anything, were you investing in. In  
8 other words, what were you trying to get as a benefit out  
9 of that investment?

10 A My understanding of the whole project it was a land  
11 development located in a great area near a major highway.

12 The idea was to build houses on 20-acre parcels  
13 and that was my interpretation of the whole project.

14 Q And your interpretation was based on whose  
15 information?

16 A Phil Kenner's.

17 Q Did you talk to anybody or meet anybody other than  
18 Phil Kenner when you discussed this Hawaii land deal?

19 A No.

20 Q Did you ever go to Hawaii to see it?

21 A No.

22 Q Again, what was it about what Mr. Kenner told you  
23 that caused you to think this would be a good way to  
24 invest \$100,000 with your money?

25 A As I said before, he's a very convincing guy. It's a

Nolan - Direct/Miskiewicz

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1 can't miss opportunity, heard of other projects that were  
2 very successful that way and I really didn't know much  
3 about it, but I trusted his opinion on it and just  
4 followed his lead.

5 Q And you did in fact write a check or wire money?

6 A I believe so.

7 Q Do you have any doubt you invested \$100,000?

8 A No, I invested \$100,000.

9 Q Now, other than \$100,000, did you invest any other  
10 amounts of money into the Hawaii land deal?

11 A No.

12 Q There has been testimony in this case about lines of  
13 credit.

14 Did you ever have a line of credit associated  
15 with your investment in Hawaii?

16 A No.

17 Q Did you ever authorize Mr. Kenner to open up a line  
18 of credit in your name?

19 A No.

20 Q Did you ever authorize Mr. Kenner to open up a line  
21 of credit in a company called Little Isle IV?

22 A No.

23 Q What about if there was a company called Little Isle  
24 IV and you and Mr. Joe Juneau and Mr. Kenner were somehow  
25 vouching for a line of credit in Little Isle IV, do you

Nolan - Direct/Miskiewicz

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1 have any memory doing that?

2 A No.

3 Q Did there come a time that you learned that a line of  
4 credit had been opened in your name?

5 A Yes.

6 Q And was that before or after your arbitration?

7 A Before.

8 Q And what, if anything, did you learn -- first of all  
9 where did you learn the line of credit was opened out of?  
10 What bank, in other words?

11 A Northern Trust.

12 Q Did you ever learn what the total amount borrowed  
13 against that line of credit was, according to Northern  
14 Trust's records?

15 A I believe the total was 2.2 million.

16 Q Did you intend to invest 2.2 million in Hawaii?

17 A No.

18 Q At any time?

19 A No.

20 Q I'll show you what has been marked for identification  
21 as Government's Exhibit 2154.

22 Showing you Government's Exhibit 2154. Do you  
23 recall ever seeing that document before?

24 A No.

25 Q There's a signature on that document. Does that



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1 appear to be your signature?

2 A It looks like it.

3 Q There's some handwriting on that document. If you  
4 signed that document, whatever the date is, do you recall  
5 whether or not that handwriting was on the document, if  
6 and when you did sign it?

7 A I mean I don't recall seeing this paper so I can't  
8 say -- if the writing was on there or not.

9 Q Is any of the handwriting on there yours?

10 A Definitely not.

11 MR. MISKIEWICZ: With the stipulation of the  
12 defendants, the Government moves for the admission of  
13 2154.

14 THE COURT: Mr. Haley.

15 MR. HALEY: Yes, sir.

16 MR. LARUSSO: No objection.

17 THE COURT: 2154 is admitted.

18 (Whereupon, Government Exhibit 2154 was received  
19 in evidence.)

20 Q So Mr. Nolan, we're now all looking at the document.

21 It is headed Board of Governors of the Federal  
22 Reserve System, Statement of Purpose for an Extension of  
23 Credit Secured by Margin Stock? Do you see that?

24 Mr. Nolan?

25 Do you see what I'm referring to?

Nolan - Direct/Miskiewicz

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1 A Yes.

2 Q Do you have any idea what any of that means?

3 A No.

4 Q Did Mr. Kenner, who was your financial advisor,  
5 explain what that meant?

6 A No.

7 Q Do you know even know if he ever showed you this  
8 document?

9 A I don't know if he did.

10 Q What I mean by that, right now sitting here, it is  
11 2015 and this document was dated whatever, but do you have  
12 an independent recollection of ever being shown a document  
13 like this by Mr. Kenner, your financial advisor?

14 A I don't remember ever seeing this.

15 MR. HALEY: Your Honor -- asked and answered.

16 Q Towards the bottom here, there's some print. It says  
17 Owen Nolan, is that your handwriting?

18 A No.

19 Q And then part one, the middle of this document, it  
20 says what is the amount of the credit being extended.  
21 \$500,000 in handwriting. Is that yours?

22 A No.

23 Q There's a question there: Will any part of this  
24 credit be used to purchase or carry margin stock? And  
25 there's a check mark. Can you tell one way or the other

Nolan - Direct/Miskiewicz

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1 if the check mark is yours?

2 A I would say no.

3 Q "And if the answer is no, describe the specific  
4 purpose of the credit," and there's some block lettering,  
5 "real estate investment"?

6 A Yes.

7 Q The lettering "real estate investment," is that your  
8 handwriting?

9 A No.

10 Q Do you know where that came from?

11 A No idea.

12 Q Are you based on this copy, do you know whether or  
13 not whether you're certain that's your signature?

14 MR. HALEY: Objection.

15 THE COURT: Sustained. Asked and answered.

16 Q There's been documentary evidence offered in this  
17 case so far and also a series of charts or graphs  
18 representing -- I'll show you or publish to you now  
19 Government's Exhibit 22 and I'll have a series of  
20 questions.

21 Can you see Government's Exhibit 22, Mr. Nolan.  
22 Do you see it on the screen in front of you?

23 A Yes.

24 Q Okay. In or about the period May 23, 2007, according  
25 to the documentary evidence that has been entered into in

**Nolan - Direct/Miskiewicz**

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1 this trial so far, you had a balance of negative  
2 \$2,189,796.02 at your Northern Trust line of credit in or  
3 about that period of time, May 2007 -- I'm sorry,  
4 April 2007.

5 Did you know that you had a line of credit that  
6 had that much money drawn against it?

7 A No.

8 Q And I'll ask you this. In or about April of 2007, if  
9 there were records showing that Michael Peca had a line of  
10 credit, money was drawn against it and some of that money  
11 went to pay interest on your line of credit, did you know  
12 that was happening in or about April 2007?

13 A No.

14 Q Did you owe Mr. Peca the amount that is shown here as  
15 being paid to your line of credit. Did you owe him  
16 \$12,236.42 in or about that period of time?

17 A No.

18 Q Did you ever owe Mr. Peca money?

19 A No.

20 Q Did you ever loan him money that he may have been  
21 repaying you from some prior loan?

22 A No.

23 Q I show you another chart which is in evidence,  
24 Government's Exhibit 24. This is for covering a period  
25 June 19, 2007, and there have been records and this chart

Nolan - Direct/Miskiewicz

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1 has been admitted showing that money was being drawn  
2 against a line of credit belonging to a Sergei Gonchar.  
3 Do you know who Mr. Gonchar is?

4 A Yes.

5 Q How do you him?

6 A I don't know him personally, just playing hockey  
7 against him.

8 Q It indicates if there were documents admitted in  
9 evidence showing money went from Mr. Gonchar's Northern  
10 Trust line of credit through Little Isle IV and then  
11 ending up paying down or paying interest of \$15,085.26 on  
12 your line of credit, did you know that that was happening  
13 in or about June of 2007?

14 A No.

15 Q Did you know that was happening?

16 A No.

17 Q And did you owe Mr. Gonchar money or did Mr. -- or  
18 did Mr. Gonchar borrow money from you at any time?

19 A No.

20 Q What about Government's Exhibit 27, again another  
21 chart based on some bank records and other exhibits that  
22 have been offered. Mattias Norstrom. Do you know Mattias  
23 Norstrom?

24 A Just from playing hockey against him. Not  
25 personally.

**Nolan - Direct/Miskiewicz**

2072

1 Q If there are bank records and other documentation  
2 showing that \$70,000 came out of his line of credit and  
3 some of it went to pay -- make a payment of \$14,142.43  
4 against your balance on your line of credit, did you know  
5 that was happening in or about October of 2007?

6 A No.

7 Q And again my question is, did he owe you money or did  
8 you owe him money, meaning Norstrom?

9 A No.

10 Q What about Glen Murray? Do you know Glen Murray?

11 A Just from playing against.

12 Q And if there is documentary evidence, and I'm  
13 referring you to Government's Exhibit 28 showing  
14 Mr. Murray having a \$100,000 withdrawal from his line of  
15 credit of which another \$14,142.43 goes to pay interest on  
16 your loan, did you know about that when it was happening  
17 in or about November of 2007?

18 A No.

19 Q Did you owe him money?

20 A No.

21 Q Did he owe you money or was he repaying you any  
22 money?

23 A No.

24 Q I'll show you Government's Exhibit 33. This is for  
25 the period April of 2008. I'm circling the cursor. What

Nolan - Direct/Miskiewicz

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1 is the name under the cursor?

2 A Yes.

3 Q Whose name is that?

4 A Mine, Owen Nolan.

5 Q It looks like there is a \$10,000 withdrawal from your  
6 line of credit. Do you see that?

7 A Yes, I see that.

8 Q And then from Little Isle IV there seems to be  
9 payments to a bunch of other people, one of them being  
10 who?

11 A Myself.

12 Q So \$10,000 is being borrowed from your line of credit  
13 to pay how much on your line of credit?

14 A Looks like \$10,112.60, maybe.

15 Q Now what is the balance?

16 A 2,000,199. Close to 2.2 million.

17 Q Did you know about this when it was happening?

18 A No.

19 Q Did there come a time that you were notified either  
20 directly or through others that the line of credit was  
21 placed into default?

22 A I'm not sure when we experienced this, the specific  
23 date we became aware of the line of credit.

24 Q I'm not asking you another date, but did there come a  
25 time that you learned you were in default?

Nolan - Direct/Miskiewicz

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1 A Yes.

2 Q Was there a settlement eventually with Northern  
3 Trust?

4 A Yes.

5 Q Do you know what was the result of the settlement  
6 with Northern Trust?

7 A They gave us 500,000 for settlement, Northern Trust.

8 Q So they settled with you in the amount of \$500,000  
9 and that was applied towards a balance of \$2,199,796.02?

10 A Yes, that's correct.

11 MR. MISKIEWICZ: May I have a moment, your  
12 Honor?

13 MR. MISKIEWICZ: I'm sorry, one last question.

14 Going back to Eufora. Did there come a time  
15 that you either because of this arbitration or something  
16 else, you demanded you would get out of your Eufora  
17 investment.

18 A Can you repeat that?

19 Q Did you ever try to get out of Eufora as far as an  
20 investment was concerned?

21 A I know I asked out of a couple of investments but I  
22 don't recall if that was one of them. It may have been.

23 Q Did you ever get any money from the \$200,000 that you  
24 put in in approximately the year 2003, did you get any  
25 money back from that investment in Eufora?



Nolan - Direct/Miskiewicz

2075

1 A No.

2 Q Do you know if anybody was -- withdrawn.

3 Did you get an interest -- if you didn't get  
4 money out, out of Eufora, did you get anything in lieu of,  
5 a stock certificate, some ownership in Eufora?

6 A Didn't get anything.

7 Q Did you get an interest in hangars in Scottsdale,  
8 Arizona?

9 A That was another investment.

10 Q But did you get anything out of that investment?

11 A No.

12 Q Did you ever settle with either Mr. Kenner or  
13 Mr. Constantine in any kind of action in which you got an  
14 interest in an airplane?

15 A I don't recall any of that.

16 Q Well, would you recall if you got an airplane?

17 A No, I don't have an airplane.

18 Q Did you get an interest in hangars in Scottsdale,  
19 Arizona, as a result of any kind of settlement?

20 A No.

21 Q As you sit here today, did Mr. Constantine or  
22 Mr. Kenner ever, either directly or indirectly, say, okay,  
23 words to the effect that if you didn't get anything from  
24 Eufora but we are going to settle with you for some other  
25 investment?

**Nolan - Direct/Miskiewicz**

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1 MR. HALEY: Judge, I object. May we approach  
2 briefly?

3 THE COURT: Yes.

4 MR. HALEY: Thank you.

5 (Whereupon, at this time the following took  
6 place at the sidebar.)

7 (Continued.)

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**Nolan - Direct/Miskiewicz**

2077

1 (In open court.)

2 MR. HALEY: Your Honor, my objection is based  
3 upon if I understood Mr. Miskiewicz question, just  
4 unnecessary confusion in this regard for the jury.

5 Owen Nolan was not an investor in the Global  
6 Settlement Fund. So when you ask him questions do you get  
7 an interest in those various hangars and airplanes, that  
8 was directly related to the scope of the Global Settlement  
9 Fund.

10 THE COURT: Why are you asking about those?

11 MR. MISKIEWICZ: Because the representations to  
12 other victims who did contribute to the GSF some of the  
13 money would go to get out the other bad apples, even  
14 Moreau and Owen Nolan. He got nothing.

15 THE COURT: Overruled.

16 MR. HALEY: I know.

17 (End of sidebar conference.)

18 (Continued.)

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Nolan - Direct/Miskiewicz

2078

1 (In open court.)

2 MR. MISKIEWICZ: Would you like me to restate  
3 the question or perhaps have the reporter read it back?

4 (Question read.)

5 THE COURT: Do you understand the question,  
6 Mr. Nolan?

7 THE WITNESS: No, not really.

8 THE COURT: Why don't you rephrase it.

9 MR. MISKIEWICZ: I don't even understand it.

10 MR. HALEY: That's why I objected.

11 Q Did you ever get any money from Mr. Constantine or  
12 Mr. Kenner to buy you out of any of your investments in  
13 Eufora or Hawaii or anything else?

14 A No.

15 Q You invested in some hangars. Do you know whether or  
16 not you own any piece of any hangers in Scottsdale,  
17 Arizona today?

18 A I don't know.

19 Q And of the \$200,000 in Eufora, to this date, you have  
20 not received any return on that at all?

21 A I don't believe so.

22 Q Okay. Well, I know you say you don't believe so. Do  
23 you have any reason to believe you either did or didn't?

24 A No, I don't believe I did.

25 MR. MISKIEWICZ: All right. No further

**Nolan - Cross/Haley**

2079

1 questions.

2 THE COURT: Okay. Cross-examination.

3 CROSS-EXAMINATION

4 BY MR. HALEY:

5 MR. HALEY: Thank you, Judge.

6 Q Mr. Nolan, good afternoon, sir.

7 A Good afternoon.

8 Q My name is Rick Haley and I represent Phil Kenner.

9 A Yes.

10 Q Mr. Nolan, I want you to take a look at a document  
11 already marked as a Government's exhibit, but for my  
12 purposes it is marked as Kenner Exhibit 54 pursuant to a  
13 stipulation. It's a duplicate of a document.

14 THE COURT: Why don't you admit it as Kenner  
15 Exhibit 4.

16 (Whereupon, Defendant's Kenner Exhibit 4 was  
17 received in evidence.)

18 Q As you look at this document, we see 2/13/2012, a  
19 special payment 1,702,942.08. Do you see that figure?

20 A Yes.

21 Q And then we see another special adjustment, says  
22 special adjustment decrease \$495,968.67, do you see that?

23 A Yes.

24 Q Do you know the source of this special payment of  
25 1,702,942.08?

**Nolan - Cross/Haley**

2080

1 A No.

2 Q Are you certain, sir, that Northern Trust did not  
3 resolve a dispute with you by making payment as relates to  
4 your account to more than \$500,000. Do you understand my  
5 question?

6 A Can you repeat it?

7 Q Sure. Are you certain that the resolution that you  
8 had with Northern Trust in connection with your account,  
9 if that resolution involved only the payment of one  
10 adjustment of \$500,000 or did it involve a greater  
11 adjustment, greater payment, as relates to your Northern  
12 Trust account?

13 A Our settlement was for 500,000.

14 Q I take it it relates to the 1,702,942.08 special  
15 payment. You don't know what that means?

16 A No.

17 Q Now, in reference to Government's Exhibit 2154, we  
18 can agree, sir, that the document has a photocopy of a  
19 sticker that says "sign here." Do you see that?

20 A Yes.

21 Q Over the course of your relationship with Phil  
22 Kenner, isn't it true, sir, that there would be not only  
23 e-mail communications between you and Phil on occasion,  
24 and not only telephone conversations between you and Phil  
25 on occasion, but certain instances where Phil would send

**Nolan - Cross/Haley**

2081

1 you through the mail documents to review and sign. Isn't  
2 that true?

3 A That's possible.

4 Q I take it under such circumstances when you would  
5 receive a document, let's say a document that was perhaps  
6 filled out by Phil Kenner for you to sign, particularly a  
7 one payment document, was there any prohibition by the way  
8 of physical disability, mental disability, where you  
9 wouldn't have the opportunity to read this document before  
10 you signed it?

11 A No, I could have read it. I'm sure I should have,  
12 but I could have read it.

13 Q Well, as relates to this particular document, 2154,  
14 when Mr. Miskiewicz read to you in front of the jury the  
15 portions of the document as it reflects on the record, you  
16 didn't testify you didn't understand what he was saying,  
17 correct?

18 A Correct.

19 (Continued.)

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**NOLAN-CROSS-HALEY**

2082

1 CROSS-EXAMINATION (Continued)

2 BY MR. HALEY:

3 Q. So you were able to understand what he was saying as  
4 relates to the content of this document when questioned  
5 just a short while ago. True?

6 A. Because we reviewed it.

7 Q. I'm sorry?

8 A. Because we reviewed it.

9 Q. I understand, sir, we reviewed it. But we reviewed  
10 it not in a rushed fashion. Isn't that true?

11 A. I'm not sure what you are asking me.

12 Q. Well, you testified just a moment ago that there were  
13 occasions where Phil would send you documents, you would  
14 have an opportunity to review them, and you signed the  
15 documents and I assume you returned them to Phil to return  
16 them to, let's say, the bank. Had that occurred?

17 A. I believe so.

18 Q. And with reference to this particular document, did  
19 you ever, to the best of your recollection, as relates to  
20 this particular document, feel pressure to read it quickly  
21 without understanding the document before you, let's say,  
22 affixed your signature?

23 A. I don't remember ever seeing that so I can't say if I  
24 ever read it.

25 Q. Okay. The relationship that you had with Phil Kenner



**NOLAN-CROSS-HALEY**

2083

1 I know you stated was one of trust. As a matter of fact,  
2 I think you said he was like a brother to you. Is that  
3 correct?

4 A. Yes.

5 Q. However, sir, we can agree there did exist a business  
6 relationship between you and Phil Kenner.

7 A. Yes.

8 Q. And as relates to that business relationship, is it  
9 not true that Phil Kenner presented you with a contract  
10 known as a Standard Advisor's Inc agreement wherein you  
11 signed the contract so that the business relationship  
12 between you and Phil in connection with the services he  
13 was providing to you would be at least memorialized in  
14 writing. Correct?

15 A. I believe so. Yes.

16 Q. Sir, I apologize for the quality of the document,  
17 itself, but I believe it is sufficient. I'll leave that  
18 up to you, sir, as to whether or not you are able to read  
19 what is in the document. I get it in this form and that  
20 is the only form in which I get it.

21 But would you kindly just take a look at this  
22 document.

23 A. How much do you want me to read?

24 Q. I want you to have an opportunity to look at the  
25 entire document, but let me refer you to the last page.

**NOLAN-CROSS-HALEY**

2084

1 And admittedly, it is a very poor copy, sir.

2 But do you see, if you are able to discern that,

3 Mr. Nolan, what appears to be your signature?

4 A. Yes, I see that.

5 Q. And indeed, this is the Standard Advisor's Inc,  
6 agreement you signed with Phil. Isn't that true?

7 A. I don't remember this document, but it seems to be a  
8 standard advisory document.

9 Q. Well, isn't it true, sir, that it was this document  
10 that gave you the legal authority to seek arbitration  
11 before an arbitration panel with reference to the dispute  
12 that developed between you and Phil? Correct?

13 A. I'm not saying it is not legit. I'm just saying I  
14 don't remember.

15 Q. Okay. Well, if I were to suggest to you that this  
16 document was the basis upon which you were able to  
17 arbitrate your dispute with Phil, would that refresh your  
18 recollection?

19 A. No.

20 Q. We can agree, can we not, sir, that there was an  
21 arbitration in 2009 wherein you made various claims  
22 against Phil Kenner, including a claim for punitive  
23 damages? Isn't that correct?

24 A. I can't remember what all the claims were.

25 Q. Well, you were present during that proceeding.

NOLAN-CROSS-HALEY

2085

1 Correct?

2 A. Yes.

3 Q. As a matter of fact, the proceeding took place over  
4 five days, did it not?

5 A. I have no idea how many days.

6 Q. Okay.

7 A. It's part of my life I'm trying to forget.

8 Q. Sir, I'm going to ask you to take a look at a  
9 document marked Kenner Exhibit 56.

10 And I don't want to prolong this proceeding,  
11 sir, but I would ask that you at least take a look at the  
12 content of the document before I ask you the next  
13 question. Okay?

14 And I mean, are you able to read the words on  
15 this document, sir? Yes or no?

16 A. I can read the words. Am I able to translate it? I  
17 don't know.

18 Q. Well --

19 A. I don't have your education.

20 Q. Sir, I respect that you do. And I appreciate the  
21 comment. But my point is, when you say you can't  
22 interpret it: It is a document in the English language,  
23 is that correct?

24 A. Yes.

25 Q. And would you just kindly take a look at the last

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1 sentence of this document, on page one. And looking at  
2 that document, does is that refresh your recollection that  
3 the arbitration involving Diana Nolan and Owen Nolan,  
4 plaintiffs, versus Phil A Kenner, Standard Advisors Inc  
5 and Standard Advisors LLC, took place from May 26 to May  
6 30 of 2009?

7 Does that refresh your recollection?

8 A. If that's the dates.

9 Q. But you are saying that doesn't refresh your  
10 recollection that that is when it took place?

11 A. It may have. I don't know. I don't write these  
12 dates down.

13 Q. Well, can we agree, sir, that at the conclusion of  
14 the arbitration that took place -- we do agree that an  
15 arbitration took place. Is that correct?

16 A. Yes.

17 Q. And do we agree that you were present during every  
18 day of that arbitration?

19 A. Yes.

20 Q. And do we agree that a number of witnesses, including  
21 Phil Kenner, testified at that arbitration?

22 A. Yes.

23 Q. And at the conclusion of that arbitration, there was  
24 an award, a determination by the arbitrators, as relates  
25 to your claims. True?

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1 A. Yes.

2 Q. Sir, is it not a fact that that document that you  
3 have in front of you -- and I would ask that you look at  
4 it, sir; I'm asking you to take a look at that document --  
5 is indeed the award that you received following the  
6 arbitration?

7 A. Anything specific I'm looking for?

8 Q. Well, my question, sir: Is or is that not the final  
9 arbitration award that you received as a result of the  
10 arbitration proceedings you brought against Phil Kenner?

11 A. It looks like the arbitration award.

12 Q. Well, from your perspective did you win or lose the  
13 arbitration?

14 MR. MISKIEWICZ: Objection.

15 THE COURT: Sustained.

16 BY MR. HALEY:

17 Q. Well, is it not true, sir, that as a result of the  
18 arbitration there was a determination --

19 MR. MISKIEWICZ: Objection.

20 THE COURT: Why don't we take our break now so I  
21 can discuss this with the lawyers.

22 (The following ensued in the absence of the jury  
23 at 3:10 pm.)

24 THE COURT: You can step down, Mr. Nolan, and  
25 take a 10 or 15-minute break.

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1 (Witness leaves the courtroom.)

2 THE COURT: Please be seated.

3 What is the objection?

4 MR. MISKIEWICZ: Relevance.

5 And more specifically, under 403 the findings of  
6 the arbitrator should not be provided to this jury because  
7 it will be confusing and will be more prejudicial to the  
8 government's case than probative.

9 The fact is the arbitration had different  
10 evidence before it. The arbitrators made certain findings  
11 regarding breach of fiduciary duty which, not regarding  
12 fraud is immaterial to any of the issues that have to be  
13 decided by this jury.

14 And the fact that an arbitrator, I think the  
15 jury will deem to be like another court, made certain  
16 finding of law and fact really have no relevance here.

17 And I think, and I apologize for breaking  
18 Mr. Haley's question, but I think that is where he was  
19 about to go with his questions: Isn't it a fact that the  
20 arbitrator found no fraud?

21 So that in sum and substance is our objection  
22 both to the question and to any effort to introduce the  
23 final arbitration award decision, which is a pretty  
24 lengthy document, makes a lot of findings of fact and  
25 conclusions of law.

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1 THE COURT: Mr. Haley?

2 MR. HALEY: Judge, once again, that is not where  
3 I was headed, at least with that question: Isn't it a  
4 fact that the arbitration --

5 THE COURT: Not with that question, but that is  
6 where you were going.

7 MR. HALEY: But I like to parse it out.

8 When we are ready for the objection, Judge, we  
9 can address it. I'm not sure I could ever get that before  
10 the court so I wasn't, frankly, Judge, necessarily going  
11 to ask that question. What I was intending to ask is  
12 whether or not he obtained a judgment in the amount of the  
13 line of credit, which indeed was true; whether or not he  
14 obtained a judgment as relates to attorneys fees pursuant  
15 to that standard advisor agreement, which indeed is true;  
16 and whether or not, as a result of that he was made whole,  
17 at least as relates to his claims against Phil Kenner, in  
18 this arbitration proceeding.

19 That was where I was going, judge.

20 THE COURT: Mr. Miskiewicz, after listening to  
21 that, do you have any objection as to what money he  
22 received out of the arbitration, as opposed to what the  
23 findings and conclusions were?

24 MR. MISKIEWICZ: I object to the fact that he  
25 got an award. I will, however, on redirect, and perhaps

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1     there are witnesses that will make it clear that he has  
2     never received any money. So the notion that he received  
3     money is really not fair. I mean, it's inaccurate. And  
4     also there is --

5             THE COURT: Are you saying he received an actual  
6     award but he never actually got the money?

7             MR. MISKIEWICZ: He never got the money. And in  
8     fact there are a number of witnesses, in fact the last  
9     witness, Mr. Nash, had a conversation with Mr. Kenner  
10    about there very thing, I think it was Mr. Nash, or  
11    Mr. McKee, which Mr. Kenner said he will never see a dime  
12    out of this.

13            So we could have gone through a lot of extrinsic  
14    material and things that have nothing to do with this.  
15    But, at the very least, if he brings that out I don't see  
16    how it helps the defense, but that is not my problem. I  
17    will, however, on redirect and perhaps through other  
18    witnesses in the future bring out the fact that there was  
19    an effort to malign Mr. Nolan and others, we heard a  
20    little bit about it this morning, regarding bad apples.  
21    There are called bad apples because he lost in this  
22    arbitration and now they are trying to, as Mr. Kenner said  
23    to one of our witnesses, screw him.

24            So I don't see how any of this is really  
25    probative of any of the issues that have to be before the



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1 jury and I would ask that it be excluded for that reason.

2 If it comes in, I would just ask for a brief  
3 opportunity to redirect on the issue that he did not in  
4 fact get any money back.

5 THE COURT: So my ruling is clear, and again I  
6 know you said you didn't intend to do that, Mr Haley, but  
7 I want to make clear so there is no misunderstanding, I'm  
8 precluding any reference to the conclusions of the  
9 arbitration for the reasons that the government indicated.

10 I don't believe they are admissible. I think  
11 they would be highly prejudicial under 403 because the  
12 jury might believe that that arbitrators had exactly the  
13 same evidence before them and we don't know what the  
14 evidence was before the arbitrators. Plus, it is not  
15 binding on them in any way. So for all those reasons  
16 there shouldn't be any reference to the findings or  
17 conclusions of the arbitration.

18 If you want to bring out the fact that he did  
19 get an award of \$1.7 him million, or whatever it was, in  
20 attorneys fees, it would be fair game for Mr. Miskiewicz  
21 to ask him on redirect: Have you ever been able to  
22 recover any of that money? Because I wouldn't want the  
23 jury to be left with the impression that he was,  
24 quote-quote, made whole by the arbitration award.

25 It is up to you whether you want to open that

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1 door or not on that particulars issue.

2 MR. HALEY: First of all, judge, thank you. And  
3 I will obviously abide by the court's ruling.

4 My only comment as relates to -- you are  
5 correct, judge, the government can ask did you ever  
6 collect on that award and I know the answer be no.

7 I might say, judge, though, as we go down that  
8 path, if the government was going further than that, one  
9 of the reasons why he hasn't been able to collect on the  
10 award, to be brutally honest, is, Phil Kenner has been  
11 incarcerated since November 13, 2013, and hasn't been able  
12 to make a living, hasn't been able to do what he does,  
13 judge, in order to build the assets to address that issue.

14 But all I'm trying the say, judge, is, it  
15 strikes me that to the extent that the government asked  
16 him: *So you had an award. Have you been able to collect*  
17 *on it?*

18 If that is as far as they are going, then I  
19 think we have solved all of the 403 issues.

20 THE COURT: Yes. Except also, again, that opens  
21 the door. And Mr. Miskiewicz or through other witnesses  
22 the government would be also entitled to argue and try  
23 eliciting from other witnesses, maybe through the  
24 statements of Mr. Kenner or other admissible evidence that  
25 that was the reason they were, quote-unquote, the bad

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1 apples; that it did not relate to an effort to take over  
2 Eufora or some other conduct with respect to Eufora but  
3 that they were bad apples because they sued Mr. Kenner.

4 Is that what are suggesting?

5 MR. MISKIEWICZ: Exactly.

6 THE COURT: So I don't even think that that  
7 could also be a ramification of this.

8 MR. HALEY: I appreciate that.

9 I might add, however, the arbitration  
10 proceeding, itself, has further relevance and materiality.

11 And just, while you are on the bench, for  
12 example, as I recall the testimony, it was crystal clear  
13 that he claims that he had no awareness of the use of the  
14 line of credit. He claims that he acquired knowledge that  
15 his line of credit had been accessed without his  
16 authorization. He had full and fair opportunity to make  
17 that specific claim before the arbitration panel in the  
18 arbitration proceedings. He did not do so. What he did  
19 do, judge, that award was based upon a claim by him that  
20 he was unaware of the loans coming out of Little Isle IV  
21 to Ken Jowdy and he did not authorize Phil Kenner with  
22 reference to those specific awards. It was made crystal  
23 clear in the testimony and made crystal clear in the  
24 award, itself, that that was the nature of his claim.

25 So to the extent that he had an opportunity to

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1 bring this what we claim is a bogus claiming before this  
2 jury that he knew nothing about his line of credit being  
3 utilized for Little Isle IV in any respect whatsoever, he  
4 had full and fair opportunity to raise that in that  
5 proceeding and did not do so, like a prior inconsistent  
6 statement.

7 THE COURT: I will allow you to ask him that  
8 question, whether he raised, whether he argued in the  
9 arbitration that his signature, that he didn't authorize  
10 the line of credit. I think that would be fair.

11 MR. HALEY: Thank you.

12 THE COURT: But if the answer is *I don't know*, I  
13 don't know what you are going to do. So given what his  
14 recollection is, at the arbitration he may very well have  
15 answered. I don't know what the argument was in the  
16 arbitration. I haven't been following it that closely.

17 MR. HALEY: The court is pressing because I  
18 suspect his answer will be *I don't know*.

19 Given what I have seen thus far, judge, and we  
20 will find out, I don't know where I will go from there but  
21 at least I will ask the question.

22 THE COURT: You are still confident we are going  
23 to get out of here by 4:30 on this witness?

24 MR. HALEY: Yes, I am.

25 THE COURT: Let's keep the break short.

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1 Mr. LaRusso, you are not going to be long?

2 MR. LaRUSSO: Right now I have about 30 or 40  
3 questions. But it does raise an issue. I hope we don't  
4 have to have a side bar.

5 Mr. Miskiewicz brought out during the direct  
6 examination that in that arbitration they discussed  
7 Eufora, and then he then proceeded to ask questions about:  
8 Well, was any money offered to you with regard to your  
9 investments in Eufora and make it appear that the Eufora  
10 investments were never sent.

11 There were discussions. There was an offer  
12 made. And it was Mr. Owen Nolan's lawyers who objected to  
13 the full Eufora investment. So I believe, based upon what  
14 has been presented to this jury, I have a right to at  
15 least bring about that out.

16 I don't know if he remembers this but I have a  
17 right at least to bring it out, Judge.

18 THE COURT: That is okay.

19 MR. HALEY: There are other issues associated  
20 with it but maybe we can deal with those.

21 THE COURT: I don't want a lot of sidebars.

22 MR. HALEY: Judge, in the arbitration award, you  
23 saw Mr. LaRusso's point was raised. And it is reflected  
24 in the record.

25 I mean, the arbitration, itself, in terms of

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1 proceedings, over a five day period the transcripts are  
2 voluminous.

3 Having said that, Judge, what the arbitration  
4 award does reveal specifically is, there was testimony  
5 regarding the claim by Mr. Nolan that he had not received  
6 Eufora documents reflecting his ownership interest in  
7 Eufora. It is page 9. And I'm not going to read into  
8 evidence what was said, but when they speak about that,  
9 the arbitration determined that there was no loss. That  
10 is not my point. But this is the point, talking about it  
11 because there had been no proof of damage with the view  
12 that he has had an interest in Eufora. So that was the  
13 view of the arbitrators. It says:

14 *The remedy, however, is not the full amount of*  
15 *the investment. The Nolans have not shown that failure to*  
16 *receive the proper paperwork caused any damage.*

17 *Mr. Kenner claimed that he would get the paperwork, and*  
18 *Mr. Constantine confirmed this. On August 6, 2009,*  
19 *Mr. Kenner submitted the forgoing information. And he*  
20 *did. And that information consisted of this operating*  
21 *agreement coming from Eufora that reflected his ownership*  
22 *interest in those entities.*

23 So when he testified on direct to this. As I  
24 recall him testifying on direct, *to this day I have never*  
25 *received such paperwork*, I ought to be able to ask him

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1 whether this refreshes your recollection as to whether or  
2 not in or about August of 2009 you received the paperwork  
3 with reference to his Eufora investment, specifically the  
4 operation agreement.

5 MR. MISKIEWICZ: He is asking, essentially what  
6 he is asking, is to refresh his recollection about  
7 hearsay. In other words, don't you remember there was  
8 some evidence produced during the arbitration that  
9 Mr. Kenner never produced to you before but now did in  
10 arbitration. And we object.

11 MR. LaRUSSO: Judge, I think -- sorry to  
12 interrupt.

13 THE COURT: You want to bring out that he  
14 produced the documentation in the arbitration?

15 MR. HALEY: Yes, sir.

16 THE COURT: It won't be hearsay. If in fact he  
17 got the documentation in the arbitration, that wouldn't be  
18 hearsay.

19 But again, you can try to refresh a witness'  
20 recollection with any document, but what seems to happen  
21 is you are referring in your question to what the document  
22 is, which is not the way to do it and it is an indirect  
23 way of getting before the jury this is what the arbitrator  
24 found.

25 If you show him a document and it doesn't

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1 refresh his recollection of whether or not he was given  
2 documentation of any interest in Eufora in the  
3 arbitration, then you can argue whether or not there is  
4 some other way to get that in. But let's not belabor it  
5 with this witness. He is or is not going to remember  
6 based upon what you show him.

7 MR. MISKIEWICZ: For clarification, that  
8 means -- I don't have any objection if there was a  
9 document that was an exhibit at the arbitration and he was  
10 shown it or whatever, produced it in discovery, I'm not  
11 objecting to that document. At least I can redirect on  
12 that or we can certainly cross-examine Mr. Kenner at the  
13 appropriate time. But for him to elicit that an  
14 arbitrator found --

15 THE COURT: No. That is not what I am saying.  
16 I am not saying he can't repeat what the arbitrator found  
17 with the document in front him. But he can't say: Having  
18 reviewed the arbitrator's findings, that that --

19 MR. MISKIEWICZ: Thank you.

20 MR. HALEY: I'm not doing that. I didn't mean  
21 that.

22 Your Honor, may I say this.

23 THE COURT: You are saying you are not doing  
24 that. It has happened so many times, with notes of the  
25 agents. When you are refreshing a person's recollection,



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1 you are not supposed to say let me show you the notes of  
2 agent Galioto on August 3. Does this refresh your memory?

3 That is not the way you are supposed to do it.  
4 I don't know what you are going to do but my concern is  
5 not just out of the blue. I have seen it happen numerous  
6 times by questioning of witnesses.

7 When you refresh a witness' recollection with a  
8 document, you should not state for the record what the  
9 document is. You should just say I'm showing you the  
10 Exhibit 1. Having reviewed Exhibit 1, does that refresh  
11 your recollection? There should be no reference to what  
12 the document is.

13 MR. HALEY: And Judge, thank you. If I might  
14 make the offer of proof.

15 The question would simply be:

16 *Sir, during the course of the arbitration in*  
17 *2009, isn't it a fact that you did receive documents*  
18 *reflecting your ownership interest in Eufora?*

19 If he says yes, it ends the questioning. If he  
20 says I don't recall, my -- and I know your Honor will  
21 correct me, my understanding of the rules is I can show  
22 him the document, not read it, ask him to read that  
23 portion of the document: *On August 6, 2009, Mr. Kenner*  
24 *submitted the forgoing information, and ask if that*  
25 *refreshes his recollection to whether he received such*

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1 documents.

2 That is all I'm going to do so. As I understand  
3 the rules -- and I know your Honor will correct me -- you  
4 can use virtually any document to refresh a person's  
5 recollection. It could be a stub from a baseball game  
6 where he says: Yes, now I remember buying a hot dog.

7 THE COURT: That would be fine if that is in  
8 fact what happened and it has some relevance to the case.  
9 If he doesn't remember, there will either be a stipulation  
10 if that is in fact what happened. I don't want to belabor  
11 the record with it.

12 But let's take a quick break and get going.

13 MR. HALEY: Thank you.

14 MR. LaRUSSO: Thank you, your Honor.

15 (Recess taken from 3:25 pm.)

16 (The following ensued in the absence of the jury  
17 at 3:35 pm.)

18 THE COURT: I am told that we have a juror who  
19 has to leave at 4:30 to make a doctor's appointment so we  
20 can't go over with Mr. Nolan. So be really efficient with  
21 time to get this done.

22 MR. HALEY: Absolutely.

23 (The following ensued in the presence of the  
24 jury.)

25 THE COURT: Mr. Haley, go ahead.

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1 MR. HALEY: Thank you, judge.

2 BY MR. HALEY:

3 Q. Now, Mr. Nolan, did you testify on direct that to  
4 this day you have not received any documentation  
5 reflecting your ownership interest in Eufora?

6 A. I don't believe I have received any. No.

7 Q. Well, sir, isn't it true that on August 6, 2009,  
8 Mr. Kenner submitted documentation to you reflecting your  
9 ownership interest in Eufora?

10 A. I don't remember.

11 Q. Would you kindly take a look at page 9 of this  
12 document, sir. And just read to yourself this paragraph  
13 from this point on down to this point. Just to yourself.

14 A. Okay.

15 Q. Having read that portion of the document, sir, does  
16 that refresh your recollection that on August 6, 2009, you  
17 received documentation or information concerning your  
18 ownership interest in Eufora?

19 A. I don't remember seeing anything.

20 Q. Now, would you kindly take a look at a document  
21 marked in evidence as Kenner Exhibit 1. And again, sir,  
22 you are entitled to look at the entire document but I'm  
23 specifically going to refer your attention to this page  
24 that has the green sticker on it.

25 Do you see your signature on that document, sir?

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1 A. Yes.

2 Q. And though it is a photocopy, you are able to  
3 recognize your signature. Correct?

4 A. I can't recognize my sit but there is some  
5 familiarity to it.

6 Q. When you say there is some familiarity with the  
7 signature, itself, familiarity in term of your  
8 handwriting. Correct?

9 A. I can't say for sure that's my handwriting. It is  
10 very sloppy.

11 Q. All right. Well, do you recall ever receiving this  
12 document: *Limited Liability Company Agreement, Little*  
13 *Isle IV LLC*?

14 A. No, I don't.

15 Q. In other words, as you sit here today is it your  
16 testimony that you did not receive it? Or you may or may  
17 not have received it but don't have a recollection?

18 A. I don't remember.

19 Q. Sir, would you kindly take a look at Kenner 57.  
20 Again, it a photocopy but that is all I have to deal with.

21 Can you take a look at that document. Do you  
22 recognize your signature on that document, sir?

23 A. I see the signature. But again, that was I would say  
24 almost a sloppy version of what I see.

25 Q. So it is your testimony that you cannot recognize

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1 your signature. Is that your testimony?

2 A. Yes.

3 Q. Sir, would you kindly take a look at what has been  
4 marked Kenner Exhibit 58 for identification. Again, you  
5 are entitled to look at the entire document.

6 And I refer your attention to the last page. Do  
7 you recognize your signature on that document?

8 A. There is a lot of similarity in that signature but I  
9 can't say for sure.

10 Q. But it is similar to yours. Is that your testimony?

11 A. It like similar but I can't say for sure. I can see  
12 some differences.

13 Q. Would you kindly take a look at what has been marked  
14 Kenner Exhibit 59. And I ask you, again, you are entitled  
15 to take a look at the entire document, but I ask you if  
16 you recognize your signature on that document.

17 A. Again, similarities and some differences.

18 Q. So your answer is that you cannot say that is your  
19 signature. Is that your testimony?

20 A. I couldn't say 100 percent that is my signature.

21 Q. Well, is it more probable than not it is your  
22 signature, sir?

23 MR. MISKIEWICZ: Objection.

24 THE COURT: Sustained as to form.

25 BY MR. HALEY:

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1 Q. Sir, would you kindly take a look at a document that  
2 has been marked Kenner Exhibit 60 for identification.  
3 Take your time.

4 A. Yes. I see it had.

5 Again, I can see similarities and differences.

6 Q. So it is your testimony that you cannot say that this  
7 is a photocopy of your signature?

8 Is that your testimony?

9 A. Not 100 percent. In light of the differences, it is  
10 unlikely to be my signature.

11 Q. Sir, would you kindly take a look at a document  
12 marked Kenner Exhibit 61.

13 Did you take a look at it?

14 A. What am I looking for? Should I briefly read the  
15 whole thing?

16 Q. I'm sorry?

17 A. It is pretty thick. Do you want me to read the whole  
18 thing?

19 Q. You are certainly entitled to look at the whole  
20 document.

21 THE COURT: Why don't tell him what the question  
22 is.

23 BY MR. HALEY:

24 Q. I will. Sir, on 12/15/2003 did you receive a  
25 facsimile transmittal from Phil Kenner to you which

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1 included various documents as attached to that transmittal  
2 cover page?

3 A. So you are asking if I received all these faxes in  
4 '03?

5 Q. Yes. I'm asking you --

6 A. I have no idea.

7 Q. I'm sorry?

8 A. I have no idea. How am I supposed to remember if I  
9 received over these faxes?

10 Q. Sir, I wasn't there. I'm asking the question.

11 Did you receive this fax? Yes or no?

12 A. I don't know.

13 Q. Now, when you filed the papers to commence the  
14 arbitration before the arbitration panel, isn't it true,  
15 sir, that at that point in time you made no claim in your  
16 papers before the arbitration panel that Phil Kevin had  
17 accessed your line of credit for purposes of the Little  
18 Isle IV investment without your authorization?

19 A. Could you repeat that? I didn't quite understand  
20 that.

21 Q. Sure. Isn't it a fact, sir, that when you filed the  
22 claim with the American Arbitration Association with  
23 reference to your dispute with Phil Kenner, you did not at  
24 that point, in 2009, make any claim that Phil Kenner had  
25 accessed your line of credit without your authorization?

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1 A. I don't recall.

2 Q. When you would meet with Phil Kenner, you said that  
3 you would do so at least twice a year. Is that correct?  
4 In person.

5 A. Once or twice.

6 Q. And during the course of those meetings, at that  
7 point in time would Phil answer any questions you might  
8 have of him? Yes or no?

9 A. I believe so.

10 Q. When you would have telephone conversations with Phil  
11 Kenner before your dispute, would Phil Kenner answer any  
12 questions you might have with him during the course of  
13 those telephone conversations? Yes or no?

14 A. In a round-about.

15 Q. Now, you played professional hockey for how many  
16 years again, sir?

17 A. 18.

18 Q. And in your business dealings as a professional  
19 hockey player, you were you a fairly savvy individual.  
20 Isn't that correct?

21 A. Define savvy.

22 Q. Sure. You negotiated a contract at one point in  
23 time, did you not, sir?

24 A. No.

25 Q. You never negotiated a contract?



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1 A. No. My agent did.

2 Q. But I take it your agent would negotiate the contract  
3 in consultation with you. Is that true?

4 A. I would be -- he would negotiate with the general  
5 manager of the team and relay messages to me.

6 Q. But I take it when he would negotiate a contract with  
7 the NHL, he would do so in consultation with you, and you  
8 would indicate, I would assume, what you wanted. Correct?

9 A. Yes.

10 Q. And isn't it a fact, sir, that based upon what you  
11 wanted in negotiations with the NHL, you were able to  
12 negotiate a contract for, there was a provision that you  
13 would continue to get paid during an NHL lockout? During  
14 that?

15 MR. MISKIEWICZ: Objection.

16 THE COURT: I will allow that.

17 You can answer that if you know.

18 A. I added in there that I would get paid during a  
19 lockout. But that wasn't the case. I was paid due to  
20 injury.

21 BY MR. HALEY:

22 Q. I understand that. But you were able to obtain that  
23 clause in your contract negotiations to get paid during a  
24 lockout. Correct?

25 A. I would have to go back and look at the contract.

**NOLAN-CROSS-HALEY**

2108

1 Q. I'm sorry?

2 A. I would have to go back and look at the contract.

3 It wasn't paid during the lockout. It was when  
4 the league resumed. The year lost on the contract would  
5 be added on to the league when the year resumed.

6 Q. But as a result of that provision and to your credit,  
7 you benefited financially, did you not?

8 A. No. It was the same amount of the contract.

9 Q. What was that amount?

10 MR. MISKIEWICZ: Objection.

11 A. As long as there was a lockout, players lost a year  
12 on their contract.

13 I negotiated a way to, if a lockout happened, I  
14 don't get paid during a lockout, but that year, I do not  
15 lose that year. Once the league is underway again, then  
16 my year gets added on.

17 BY MR. HALEY:

18 Q. And that resulted in a financial benefit. Correct?

19 A. Well, I don't know if you call it a benefit. It is  
20 under the same contract.

21 Q. Well, did or did you not receive compensation for  
22 that provision in the contract?

23 MR. MISKIEWICZ: Objection. Relevance.

24 THE COURT: Yes. Sustained.

25 I think we should move on.

**NOLAN-CROSS-HALEY**

2109

1 BY MR. HALEY:

2 Q. The fact of the matter, sir, that apart from  
3 recommendations that Phil Kenner made to you with  
4 reference to various investments, you as well would invest  
5 in real estate ventures on your own. Isn't that true?

6 A. I mean, I purchased a house, if that is what you  
7 refer to.

8 Q. Well, did you purchase a house and adjacent land as  
9 well?

10 Do you remember doing things of that nature?

11 A. Yes.

12 Q. Do you recall the extent of those real estate  
13 investments, the house and other land that you purchased?

14 A. So what are you asking me?

15 Q. Well, is it not a fact, sir, that over a period of  
16 time through your own efforts you purchased real estate  
17 approximating \$5 million?

18 MR. MISKIEWICZ: Objection. Relevance.

19 THE COURT: I will allow this and then we will  
20 continue on.

21 You can answer that question.

22 THE WITNESS: I can?

23 I didn't hear what you said.

24 THE COURT: I said you can answer this question  
25 and then we are going to move on.

**NOLAN-CROSS-HALEY**

2110

1 A. Okay. I don't know what the total is.

2 BY MR. HALEY:

3 Q. All right. But it is fair to state -- last question,  
4 sir -- you definitely had an interest in investing in real  
5 estate, did you not?

6 A. Buying a house to live in. Yes, I guess so.

7 Q. Buying a house to live in and also investing in other  
8 vacant land. Isn't that true? For development purposes.

9 A. No.

10 Q. Is it your testimony, sir, that at no point in time  
11 did Phil Kenner ever have a discussion with you concerning  
12 investing in real estate in Hawaii?

13 Is that your testimony?

14 A. Shay that again, please?

15 Q. Sure. Is it your testimony that at no point in time  
16 did Phil Kenner ever even talk to you about investing in  
17 real estate development in the State of Hawaii?

18 A. Phil suggested it and I followed.

19 Q. And as a result of that, an LLC was created.  
20 Correct?

21 A. I can't remember the procedure he did.

22 Q. And that was the Little Isle IV. Is that true?

23 A. No idea.

24 Q. Well, did you ever read the operating agreement as  
25 relates to Little Isle IV?

**NOLAN-CROSS-HALEY**

2111

1 A. No.

2 Q. Do you recall receiving the operating agreement that  
3 relates to Little Isle IV?

4 A. No.

5 MR. MISKIEWICZ: Asked and answered.

6 MR. HALEY: May I have a moment, Judge?

7 (Counsel and client confer.)

8 BY MR. HALEY:

9 Q. Sir, would you kindly take a look at Kenner Exhibit  
10 2.

11 A. What would you like me to look at?

12 Q. Well, do you recall ever receiving this document?  
13 Just yes or no.

14 A. It doesn't look familiar.

15 Q. I apologize, sir. You did testify on direct that you  
16 did invest in Little Isle IV. My question is simply this.

17 After you your investment in Little Isle IV, is  
18 it not a fact that Phil Kenner kept you apprised as to the  
19 development of the property, operating agreements, and  
20 paperwork associated with that project?

21 Isn't that true?

22 MR. MISKIEWICZ: Objection to form.

23 THE COURT: That's okay.

24 You can answer that.

25 A. If I understand you correctly, I would ask about the

**NOLAN-CROSS-HALEY**

2112

1 project. He would say things are going well, things are  
2 moving along.

3 So if that was your question, that is what I was  
4 told.

5 Q. And as relates to those conversations, were there  
6 times when Phil would, in turn, offer to send you  
7 paperwork associated with that project?

8 A. I don't remember receiving it.

9 MR. HALEY: May we have one moment? Thank you.

10 (There was a pause in the proceedings.)

11 MR. HALEY: While we are doing that.

12 BY MR. HALEY:

13 Q. Sir, would you kindly take a look at a document  
14 marked Kenner Exhibit 62. And before I ask you a  
15 question, sir.

16 In 2006 or 2007, did you reside at 15471 Francis  
17 Oaks Way, Los Gatos, California 95032?

18 A. That is my address. I don't know if I was there at  
19 that time.

20 Q. Well, do you ever recall receiving that document,  
21 known as a K1?

22 A. No.

23 Q. Who, in let's say 2006 and 2007, would handle your  
24 federal and state income taxes?

25 A. My wife did a lot of the paperwork.

**NOLAN-CROSS-HALEY**

2113

1 Q. Did she do it alone or did she do it with some  
2 assistance from someone?

3 A. I believe she had assistance.

4 Q. Would that be an accountant?

5 A. I believe so.

6 Q. And I take it, in connection with the accountant, you  
7 would return over all documents you received as relates to  
8 the filing of your taxes, including something known as a  
9 Schedule K1?

10 A. I would guess so.

11 MR. HALEY: Judge, I would offer this into  
12 evidence as Kenner Exhibit 62.

13 MR. MISKIEWICZ: Objection.

14 THE COURT: I don't think you can offer it based  
15 upon that questioning. We can talk about it after the  
16 jury leaves today.

17 MR. HALEY: I will talk to the government about  
18 that, judge.

19 THE COURT: Okay.

20 BY MR. HALEY:

21 Q. Sir, would you kindly take a look at a document  
22 marked Kenner 63.

23 Do you see your signature on that document?

24 A. Yes.

25 Q. And where does it appear?

**NOLAN-CROSS-HALEY**

2114

A. Bottom left.

(Continued on the following page.)

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NOLAN-CROSS-HALEY

2115

1 Q Sir, will you kindly take a look at Kenner Exhibit 2.  
2 There is a different response form on this document. Do you  
3 see a relationship between Kenner Exhibit 63 and Kenner  
4 Exhibit Number 2, if you read the content of?

5 Let me be specific, sir. Does Kenner Exhibit 63  
6 indicate that you had received and read this particular  
7 document, Kenner Exhibit 2, and agree to its terms and  
8 conditions?

9 A You asked me are they the same?

10 Q Do you see the relationship between Kenner Exhibit 62  
11 that bears your signature and says response form?

12 A A very faded signature, I might add.

13 Q I understand, sir. A faded signature.

14 A You asked me if that is my signature. I can't tell from  
15 that.

16 Q Is or is that not your signature?

17 A How can I tell?

18 Q I'm sorry?

19 A I can't tell. It's a faded copy.

20 Q I thought you testified a moment ago that is your  
21 signature?

22 A You asked me to see the signature. You asked me if I see  
23 the signature. That is the signature that I saw. Can I say  
24 for sure it is, I have no idea.

25 Q The record will speak for itself.

NOLAN-CROSS-HALEY

2116

1           My question, I guess, is, as you read the content of  
2 these documents, do you see the relationship between the  
3 response form and Kenner Exhibit Number 2? Specifically,  
4 isn't this response form, which bears a signature, reference  
5 this particular document here saying that I have read and  
6 agree to the terms of this document in Kenner Exhibit  
7 Number 2?

8           MR. MISKIEWICZ: Objection.

9           THE COURT: Sustained.

10 Q       Well, do you see the words Owen Nolan --

11           MR. MISKIEWICZ: Objection.

12           THE COURT: What document are you referring to?

13           MR. HALEY: Kenner Exhibit 63.

14           THE COURT: You're asking if that's his signature or  
15 not?

16           MR. HALEY: Judge, there's also a --

17 A       I'm not saying it's not my signature. I'm just saying  
18 it's not very clear to say it is. That's all I'm saying.

19 Q       We can agree, sir, where it says "Print Name: Owen  
20 Nolan," you wrote Owen Nolan, is that correct?

21 A       That is my area, yes.

22           MR. HALEY: Judge, I have no further questions.

23           THE COURT: Mr. LaRusso.

24           You may proceed.

25           MR. LaRUSSO: Thank you, Your Honor.

NOLAN-CROSS-LaRUSSO

2117

1 CROSS EXAMINATION

2 BY MR. LaRUSSO:

3 Q It's been a long day, Mr. Nolan. I will try to be as  
4 brief as I can. Good afternoon.

5 You testified that you recall meeting Tommy  
6 Constantine one time, is that correct?

7 A I may remember meeting him once.

8 Q I think the word you used, it was very brief. It was a  
9 very brief meeting. It was a social meeting. It was not a  
10 business meeting, is that correct?

11 A I believe so, yes.

12 Q How long did that meeting last, was it more like an  
13 introduction hello?

14 A I arrived at a place with some friends, and he was there.  
15 I believe it was a brief encounter. It was a long time ago.

16 Q There were no discussions at all about your investment in  
17 Eufora?

18 A Strictly social. My neighbor's. I think a little bit  
19 about racing cars because he was into the race cars.

20 Q Do you remember when that occurred?

21 A No.

22 Q I'm bad with dates too. Using the arbitration around  
23 2008 or 2009, was your brief meeting with Mr. Constantine  
24 before the arbitration or after the arbitration?

25 A When we first met?

NOLAN-CROSS-LaRUSSO

2118

1 Q Yes, this brief encounter we're talking about.

2 A Before the arbitration.

3 Q Do you recall testifying in a deposition at that  
4 arbitration on May 26, 2009?

5 A Yes.

6 Q Do you remember being asked these series of questions on  
7 page 131 (reading):

8 "QUESTION: Eufora is a company, a company in  
9 Scottsdale, is that correct?

10 ANSWER: I believe so.

11 QUESTION: And you met the principle, Tommy  
12 Constantine, of that company?

13 ANSWER: I don't remember meeting Tommy.

14 QUESTION: You don't remember ever meeting him?

15 ANSWER: No.

16 QUESTION: Do you remember ever speaking to anybody  
17 from that company?

18 ANSWER: No."

19 Do you remember those questions and giving those  
20 answers?

21 A Not specifically. But at that time that's what I  
22 thought.

23 Q Your memory is much better years ago, correct, back in  
24 2009 than it would be in 2015?

25 A Some things come and go.

NOLAN-CROSS-LaRUSSO

2119

1 Q It would be more accurate if you didn't meet with him  
2 before the arbitration, at least according to the testimony on  
3 May 26th, 2009?

4 A Thinking back, I believe I met him before.

5 Q But at that time when you testified --

6 A At that time I didn't think I did.

7 Q Would it be fair to say that that brief encounter is the  
8 only time you ever met Mr. Constantine before the arbitration?

9 A Yes, I believe so.

10 Q You never spoke to Mr. Constantine before the arbitration  
11 other than the one brief encounter?

12 A I don't remember.

13 Q Would it be fair to say that you never once called  
14 Mr. Constantine to talk to him about your investment before  
15 the arbitration?

16 A I believe -- I don't believe I did. I don't remember if  
17 I did.

18 Q Do you agree with me that before the arbitration you  
19 never called Eufora's office or Mr. Constantine and said that  
20 you would like to come over and see the facility where you  
21 invested your money, is that correct?

22 A That's correct.

23 Q Just so that I don't have to repeat it later, your  
24 investment in Eufora, you testified, was two \$100,000 wire  
25 transfers, is that correct?

NOLAN-CROSS-LaRUSSO

2120

1 A Yes.

2 Q You also had a \$550,000 in the Scottsdale Air Park, is  
3 that correct?

4 A Yes.

5 Q So the total investment would have been around \$750,000?

6 A Yes.

7 Q At the time before the arbitration, where you were  
8 living?

9 A Before the arbitration? In San Jose.

10 Q Was there ever a period of time that you lived in  
11 Scottsdale?

12 A Yes.

13 Q What time period?

14 A I don't remember.

15 Q How many years did you live in Scottsdale?

16 A One year. Not a full year.

17 Q Are you aware that you and Mr. Constantine lived close to  
18 each other at the time that you lived in Scottsdale, Arizona?

19 A No.

20 Q How far was your home from the investment, both Eufora  
21 and the Scottsdale Air Park?

22 A I know where the Air Park is, but I don't know where  
23 Eufora is. I'd say the Air Park was seven, eight miles. I  
24 don't know.

25 Q Did you ever visit the Air Park during the period of time

NOLAN-CROSS-LaRUSSO

2121

1 before the arbitration?

2 A I went by the area where the hangar was supposed to be.

3 Q You never stopped and went in to either meet with or  
4 speak to any of the principles of Eufora while you were living  
5 in Scottsdale?

6 A I didn't really know anyone.

7 Q You could have contacted Mr. Kenner if you really needed  
8 the information, correct?

9 A Well, he's the one who pointed out where it was. So he  
10 was with me when I drove by.

11 Q By the way, you made a number of investments. I think  
12 some of which you talked to us about here today. The Hawaiian  
13 project, I believe, was one. Did you also invest in Mexican  
14 real estate?

15 A Yes.

16 Q Cabo San Lucas?

17 A Yes.

18 Q Diamante Del Mar?

19 A Yes.

20 Q It'd be fair to say you had a number of investments and  
21 startup companies. And again, I don't want to rush this. If  
22 my question's wrong, please correct me.

23 A Okay.

24 Q I'm just going to mention the investments. And the  
25 question's going to be, did Mr. Constantine have anything to

NOLAN-CROSS-LaRUSSO

2122

1 do with these investments. Impact Protective Equipment?

2 A No.

3 Q Integrated Telecommunication?

4 A No.

5 Q Escer Holding?

6 MR. HALEY: Judge, I object.

7 THE COURT: I don't know how long a list it is.

8 MR. LaRUSSO: It's just a number of investments he  
9 had with Mr. Kenner and Mr. Constantine had nothing to do with  
10 them.

11 MR. HALEY: Your Honor, I'm objecting on various  
12 grounds. One of them is relevance and materiality. The other  
13 one has to do with other issues we discussed.

14 THE COURT: We don't need to go company by company.  
15 You can establish he had a number of other investments and  
16 that Mr. Constantine had nothing to do with them.

17 MR. LaRUSSO: Judge, that's the question.

18 Q You had a number of other investments with Mr. Kenner and  
19 Mr. Constantine didn't have anything to do with them, is that  
20 correct?

21 A Yes.

22 Q Now, you testified about the arbitration. Did that  
23 arbitration also involve Eufora?

24 A I believe so.

25 Q I believe on direct you mentioned in response to the



NOLAN-CROSS-LaRUSSO

2123

1 question by the government, that Eufora was discussed, in  
2 part, at the arbitration, correct?

3 A I think so, yes.

4 Q When I use "Eufora" I'm talking about your entire  
5 investment. The 200,000, the 550,000. I won't repeat that  
6 again.

7 A Okay.

8 Q Would it be fair to say that in this arbitration your  
9 concern about your investment in Eufora and the Air Park was  
10 actually addressed before that by your attorney?

11 A Can you repeat that?

12 Q They brought out your investment, they presented your  
13 side of the investment to the arbitrators during that  
14 proceeding?

15 A Yes.

16 Q Would it be fair to say before this arbitration you never  
17 inquired about your investments with Mr. Constantine before  
18 you filed that lawsuit -- or that arbitration?

19 A I don't think so.

20 Q By the way, as a result of this lawsuit there was some  
21 discussion about documentation. Did you ever receive any  
22 documentation from Mr. Constantine and/or any of the lawyers  
23 involved in the proceedings regarding proof of ownership that  
24 we're talking about with Eufora?

25 A I don't remember.

NOLAN-CROSS-LaRUSSO

2124

1 Q Do you have any recollection of your lawyers receiving  
2 any documentation?

3 A I don't.

4 Q It could have happened, you just don't have a  
5 recollection one way or the other?

6 A That's correct.

7 Q Do you remember, at all during this proceeding, providing  
8 proof or learning that a company called AZ Eufora Partners  
9 owned an interest in Eufora itself?

10 A Repeat that again.

11 Q Sure. Do you remember during this arbitration learning  
12 or receiving any proof that AZ Eufora Partners I owned an  
13 interest in Eufora?

14 A I don't remember.

15 Q Did you ever hear about a holding company having an  
16 interest in Eufora?

17 A No.

18 Q By the way, during the lawsuit did you learn or did you  
19 allege that your interest was a direct interest in Eufora or  
20 did you hold your interest to a holding company?

21 A I can't remember.

22 Q Is it possible?

23 A I don't remember.

24 Q You leave that up to the lawyers, right?

25 A I suppose so.

NOLAN-CROSS-LaRUSSO

2125

1 MR. MISKIEWICZ: Objection.

2 Q Do you know a person by the name of Kim Barne? Have you  
3 heard of that name?

4 A I don't think so. It doesn't ring a bell.

5 Q Do you know a person by the name of Tim Gaarn, he is a  
6 managing member of a holding company of Eufora's interest?  
7 Did you ever hear that in the arbitration?

8 A I don't remember that.

9 Q Okay. Fair enough.

10 After the lawsuit, do you recall being contacted by  
11 anyone and being told that you hold your interest in Eufora  
12 directly and not to a holding company?

13 A I don't remember that either.

14 Q A few more and see where we go.

15 A Okay.

16 Q Do you recall at any point either during the arbitration  
17 or after the arbitration, Mr. Constantine and/or his lawyers  
18 offering 100 percent return of your investment of both Eufora  
19 and the Air Park, \$750,000?

20 A I don't remember that.

21 Q I'm going to show you a document. I'm going to ask you  
22 to look at it. The only question after looking at it is if it  
23 refreshes your recollection that offer was made to you at some  
24 point during the arbitration for a full return of your  
25 investment in Eufora.

NOLAN-REDIRECT-MISKIEWICZ

2126

1 (Handing.)

2 A To be honest, a lot going on those days and I don't  
3 remember.

4 Q Does that in any way help you remember that there was  
5 some discussion about an offer being made about your  
6 investment in Eufora?

7 A I don't remember that.

8 Q Do you recall anything about monies being made available  
9 to pay off your Eufora interest from a trust account in the  
10 name of Ron Richards?

11 A It doesn't ring a bell.

12 Q Since the end of the arbitration, have you ever reached  
13 out to Mr. Constantine to get a return of your investment in  
14 Eufora?

15 A No.

16 Q When I say "Eufora," I'm talking about Eufora and Avalon.

17 A Yes.

18 MR. LaRUSSO: Thank you very much.

19 Nothing further, Your Honor.

20 THE COURT: Redirect.

21 REDIRECT EXAMINATION

22 BY MR. MISKIEWICZ:

23 Q Mr. Nolan, you were asked by counsel for Mr. Kenner  
24 whether or not you received a \$1.7 million settlement from  
25 North -- I'm sorry -- from the bank in addition to the

NOLAN-REDIRECT-MISKIEWICZ

2127

1 \$500,000 settlement that you testified about. Do you recall  
2 that?

3 A Repeat it.

4 Q The line of credit that you testified about on your  
5 direct.

6 A Yes.

7 Q You said that you received a \$500,000 settlement from the  
8 bank.

9 A Yes.

10 Q The total amount that was due and owing at the time was  
11 over 2.2 million, is that correct?

12 A Yes.

13 Q Who paid off the balance?

14 A I did.

15 Q So when you were shown something that indicated  
16 approximately \$1.7 million paying off the balance of the line  
17 of credit, that came out of your pocket, is that right?

18 A Yes.

19 Q It wasn't a bank settlement?

20 A No.

21 Q Last question. You had a couple questions about an air  
22 park in Scottsdale. As you sit here today, do you believe  
23 that you still own a percentage of some sir park in  
24 Scottsdale, Arizona?

25 A At this point I don't know what to believe.

NOLAN-REDIRECT-MISKIEWICZ

2128

1 MR. MISKIEWICZ: Thank you, very much.

2 No further questions.

3 THE COURT: Any questions?

4 MR. HALEY: No, sir.

5 MR. LaRUSSO: No further questions.

6 THE COURT: You may step down, Mr. Nolan. Thank  
7 you.

8 (Witness excused at 4:20 p.m.)

9 THE COURT: Members of the jury, so, as you know, we  
10 are not sitting tomorrow. In terms of where we stand in the  
11 trial, I haven't had a chance to speak to the lawyers. I was  
12 focused on trying to get Mr. Nolan done. So I'm going to  
13 speak to them after you leave today.

14 As you know, this is week four of the trial. But we  
15 lost a week, so it's technically week three of the trial. I  
16 don't know where we exactly stand on the estimate of the  
17 trial. We had a good week this week. As you know, we went  
18 through a lot of witnesses this week. So I do need to speak  
19 to the lawyers about that.

20 We do have an issue next week with a couple of  
21 jurors who aren't available on Wednesday and Thursday next  
22 week. I'm trying to figure out how to handle that. So what  
23 I'm going to ask you do is -- I'm asking the law clerks to  
24 wait over here. And before you leave today, if you have any  
25 conflicts, I'm not suggesting you find any, I just don't want

1 any surprises. So if you have any vacation plans in June or  
2 weddings, or any other things, doctor appointments, between  
3 Monday and Thursday that you cannot move, please let my law  
4 clerk know. If you're not sure, obviously you can let her  
5 know on Monday. I just don't have a calendar here. But I  
6 just want to make sure in making these assessments to find out  
7 if there are other scheduling conflicts that I'm not aware of.

8 Okay. I'll have a much better grip on the estimate  
9 on either Monday or Tuesday to figure out what to do about  
10 Monday and Thursday next week. Keep Wednesday and Thursday of  
11 next week open. We may make other arrangements. I told the  
12 jurors they may go to the things they need to go to. If  
13 necessary, we have the alternates to replace them. But I  
14 would prefer not to do that if I don't have to.

15 I do, again, want to compliment you. I'm not just  
16 saying this. You've been very conscientious, patient. You  
17 were not only willing to serve the amount of time that I  
18 indicated, but you've been great in your understanding on the  
19 complexities in the various scheduling that have come up. And  
20 that is no one's fault. It is no one's fault. So I  
21 compliment you on that. I really appreciate it.

22 Have a great weekend. Don't read anything regarding  
23 the case, don't listen to anything about the case, don't  
24 discuss the case. I will see you on Monday at 9:30. Thank  
25 you.

U.S.A. v. KENNER and CONSTANTINE

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1 (Whereupon the jury leaves the courtroom at 4:25  
2 p.m.)

3 THE COURT: You may be seated.

4 Let's see if we can inventory here. We have Monday.  
5 What do we have for Monday?

6 MR. MISKIEWICZ: On Monday we have another hockey  
7 player, Darryl Sydor. Steven Ross, who's an attorney. That  
8 should be relatively brief. He was involved in the diversion  
9 of GSF funds to the Palms. James Grdnia, G-R-D-N-I-A.

10 I can go on. I think that Mr. Grdnia will take us  
11 to the end of Monday, but I'll continue. There's Bruce  
12 Berreth. Chris Berreth, B-E-R-R-E-T-H. Chris Manfredi.  
13 Mr. DiSalvo, and Peter Melley.

14 I can go on.

15 THE COURT: Well, where is your assessment in terms  
16 of, overall, where you stand?

17 MR. MISKIEWICZ: Our assessment is that if we did  
18 not have these breaks next week, we probably will not be able  
19 to rest until June 11th. I understand the situation with the  
20 two witnesses -- the two jurors. If we broke on one of those  
21 days, or both of those days, I would just estimate that our  
22 resting date would be a couple of days thereafter. So we're  
23 talking about the second or third week of June. I believe  
24 that the defense will have a case. That's where we're at.

25 THE COURT: So basically you're thinking two full



1 weeks. June 11th is basically two full weeks, eight trials  
2 days.

3 MR. MISKIEWICZ: Yes.

4 THE COURT: So if we lose two trial days, you think  
5 it will be June 16th you're resting on.

6 MR. MISKIEWICZ: Yes. In all candor, we ditched a  
7 couple of witnesses. We're trying to scale back on direct as  
8 much as possible. But that's where we're at.

9 THE COURT: Okay. I'm not binding anyone, I'm just  
10 trying to get a sense of how the defense case will be  
11 anticipated. How many trial dates do you have, Mr. Haley?

12 MR. HALEY: Easily, two, Judge.

13 Your Honor, I might say -- I don't know, perhaps I  
14 can work this out with the government. A perspective witness,  
15 C.R. Gentry, it's our anticipation that he was going to be  
16 called as a government witness. They've indicated they're not  
17 going to be calling him. He's currently a government witness.

18 If that's the case, it is my inclination to call him  
19 as a defense witness, which would extend that probably two-day  
20 window. Without committing the government to anything, I have  
21 been in communication with them about perhaps we could reach  
22 some mutually agreeable stipulation to allow a record to come  
23 in. Actually, spreadsheets, Judge, created by Mr. Gentry.  
24 And there's some issues about the values of the spreadsheets.  
25 We are in talks with the government about whether we would

1 preserve our right to argue in front of the jury that they  
2 have value, they don't have value. But that would preclude  
3 the necessity of C.R. Gentry.

4 MR. LaRUSSO: Judge, I'll be honest with you. We're  
5 not going to stipulate to anything that Mr. C.R. Gentry  
6 produced because our information is that what he produced is  
7 inaccurate. So we're not going to be able enter into that  
8 stipulation regarding Mr. C.R. Gentry.

9 THE COURT: Then don't waste your time.

10 MR. HALEY: Yes. I apologize. I did say, when I  
11 spoke to Mr. Miskiewicz, that I would speak to Mr. LaRusso  
12 about it, and I didn't do so.

13 THE COURT: Let me speak to my law clerks first.

14 MR. LaRUSSO: Judge, just to let you know, from our  
15 point of view we're looking all 10 to 12 witnesses. I know  
16 two of them will probably be lengthy witnesses, both direct  
17 and controls. The others, hopefully, we'll narrow their  
18 scope. But I think at least a week, Judge. I'm trying to get  
19 my partner to work on that and give me a better estimate. But  
20 that's where I project at this point.

21 THE COURT: Okay. One moment. Let me speak to my  
22 law clerks.

23 So my law clerk spoke to one of the jurors. It's  
24 not too bad. Alternate 3 is a high school teacher. There's  
25 some a graduation activities in June. He didn't know the

1 exact date, but he said he couldn't miss that. June 30th,  
2 he's starting a vacation on June 30th. So that's not a  
3 problem, as far as I'm concerned.

4 Juror No. 10 had some weekend vacation. She was  
5 planning on coming back on June 8th from her vacation. She  
6 has decided she does not want to be excused. She'll rearrange  
7 that to another weekend.

8 So it seems like we're in decent shape. I think we  
9 should just continue to hold those two other jurors until  
10 Tuesday and make an assessment on Tuesday.

11 My concern is that, just doing the math, the  
12 government, if we need to take a break for Wednesday and  
13 Thursday of next week, the government would rest June 11th.  
14 Let's assume Mr. Constantine's case takes a week. That's the  
15 week of the 15th. Assume Mr. Kenner's case is two or three  
16 days. It will be the following week. We have summations,  
17 instructions, and deliberations.

18 So, without missing any dates, we're well into June,  
19 the whole month of June. So I'm very concerned about skipping  
20 those two days given where we're at. We have four alternates.  
21 We have still have two alternates left. We have no  
22 expectation that we're going to need those alternates for the  
23 rest of the month of June.

24 You can talk me out of it, but I'm concerned if we  
25 take those two days off, we're going to be in July. We'll

1 have a jury with problems in July. And that's going to be --  
2 Mr. Haley is raising his hand. The jurors will be getting  
3 unhappy here that we're going to take up June, and we start  
4 talking about July, we'll have a lot of problems. My  
5 inclination is -- obviously if we had no alternates left, I  
6 would be concerned going three or four weeks without any  
7 alternates. But we have two alternates left and we have no  
8 problems in June.

9 I still think -- I want to emphasize you guys were  
10 great this week. Everybody did really well. We covered a lot  
11 of witnesses. It was a shame Mr. LaRusso's mother passing  
12 away, which weighed on the five week estimate. We lost some  
13 days and that's not great. So we have to continue -- the  
14 government should continue to do whatever it can to streamline  
15 its case. I'm hoping that the questioning for this week.  
16 Obviously we can go on that, we've been through this with  
17 other witnesses. We don't need to have every hockey player  
18 asked the same question. It's a repetition of the same  
19 documents the jury has seen two, three times. Hopefully when  
20 you go through the hockey players, you can pare it down.

21 Do you have want to address that now?

22 MR. MISKIEWICZ: Actually, I have a request, Judge.  
23 The witnesses that we have scheduled for the latter half of  
24 next week, some of them are the same witnesses we ended up  
25 sending home two weeks ago because we had a recess. Many of

1    them are, also, on the West Coast. We need to make  
2    arrangements --

3               THE COURT: You're saying we can't wait until  
4    Tuesday to decide.

5               MR. MISKIEWICZ: It would be difficult for us to get  
6    them here overnight, yes. I understand that the Court is not  
7    prepared to make a decision right now, if you could let us  
8    know --

9               THE COURT: Let me put it this way. If there are  
10   out of town witnesses, I'll hear from anybody now. Assuming  
11   we don't have any other problems with any of the jurors next  
12   week, we don't lose a juror to sickness or something else they  
13   tell us about Monday or Tuesday, does anybody object to, at  
14   the end of the day Tuesday, releasing those two jurors and  
15   substituting the two alternates?

16              MR. LaRUSSO: I don't, Judge.

17              MR. HALEY: Nor do I, Your Honor.

18              MR. MISKIEWICZ: No.

19              THE COURT: I will make arrangements for them to  
20   come. There's a small chance that a bunch of jurors on Monday  
21   start telling me they have issues in June, or they're sick,  
22   then we may have to recess. Unless something unexpected  
23   happens next week, that's what I'm going to do.

24              MR. MISKIEWICZ: Thank you.

25              THE COURT: All right. There are a couple of more

1 items, a couple of rulings. I'm not sure it was, but I told  
2 the government I would explain it later. I remember what it  
3 was. It had to do with Mr. LaRusso introduced an Arizona  
4 website document that the government objected to. The  
5 government objected to an e-mail of 2012 from Mr. Constantine  
6 to Mr. Nash regarding Eufora. The government objected to the  
7 e-mail on hearsay grounds.

8           The reason I overruled that objection, I think the  
9 Arizona website goes to the same point. With other witnesses,  
10 what I ruled was any probative value of something that  
11 happened three years after the alleged diversion of funds took  
12 place had no probative value or so little probative value that  
13 it was substantially outweighed by the confusion, under Rule  
14 403.

15           That was different with respect to Mr. Nash and his  
16 conversation with Mr. Constantine because the government, in  
17 its direct of Mr. Nash, brought out a document that Mr. Nash  
18 testified was given to him in 2012. The suggestion by the  
19 government by the questioning is that this was an effort to  
20 cover up a fraud that had already taken place. In other  
21 words, Mr. Constantine in 2012 was simply papering -- taking a  
22 piece of paper and writing on that piece of paper, providing  
23 it to cover up the fraud that had taken place earlier.

24           So the suggestion that some aspect of the fraud took  
25 place in 2012, it then allowed Mr. Constantine to explain his

1 state of mind in 2012 as to why did that document -- what it  
2 related to. So by the government offering something in 2012  
3 to try to show that the fraud was continuing, at least with  
4 respect to Mr. Nash in 2012 by handing him a piece of paper,  
5 that allows Mr. Constantine to get into his state of mind of  
6 the e-mail that he sent during that time frame. What he  
7 explained to Mr. Nash, what he's doing, what he's thinking, as  
8 well as any website that they viewed together to confirm  
9 whether or not he had shares in the company at that time. So  
10 that was the basis for that ruling.

11 MS. KOMATIREDDY: Thank you, Judge.

12 THE COURT: There was an objection on redirect that  
13 it was asked and answered. But the redirect was very  
14 important, in my view, because the defense did a good job on  
15 the cross of suggesting that the money was provided for broad  
16 purposes, for various lawsuits.

17 So even though the government obviously did cover  
18 the various items, did you authorize funds for X and Y in the  
19 direct, given the cross where it was suggested on certain  
20 questions that the authorization was so broad that it could  
21 have included anything, it's then proper for the government to  
22 redirect to confirm and clarify that even though it was meant  
23 for very broad purposes, it did not extend to other things  
24 that the government already said were diversions of the money.  
25 So that was the basis for that.

1           There's two other things I want to briefly cover --  
2 three other things. One is, Mr. LaRusso, you suggested that  
3 it was possible that the jurors were asking about your mom  
4 because they read some newspaper article. First of all, I  
5 pulled the newspaper article. It actually does refer to your  
6 mom.

7           MR. LaRUSSO: I didn't see the article.

8           THE COURT: It says he had a family emergency. So  
9 to the extent they were asking about your mom, they could have  
10 gotten that from the article. If anyone wants to disagree  
11 with me based on what transpired, they can certainly disagree  
12 with me. I just want the record to reflect that there were  
13 multiple side-bars back and forth about Mr. LaRusso's mom. He  
14 was obviously upset about information he was receiving as he  
15 was sitting in court.

16           It's my view that he was speaking extremely loud at  
17 the side-bar and describing the situation in a manner that  
18 everybody in the courtroom could hear what the situation was.  
19 I'm not faulting you. Under the circumstances, it's  
20 understandable. I have every reason to believe, based upon  
21 how loud you were speaking, that that is how the jurors knew  
22 that his mom was sick.

23           So I just wanted to clarify that I don't believe  
24 they learned it from a newspaper article. I don't think  
25 anyone wants to question them regarding that.



1 MR. LaRUSSO: No, Your Honor.

2 MR. MISKIEWICZ: No, Your Honor.

3 MR. HALEY: No, Your Honor.

4 THE COURT: The last thing is, Mr. LaRusso, you said  
5 this at side-bar. Actually, there's two things. You said  
6 this at side-bar. I thought about it some more. I want the  
7 record to be clear. There was questioning of the Playboy  
8 Enterprise witness. There was discussion about certain  
9 invoice. He suggested that's the problem with this case.

10 I'm not sure what the government is arguing or  
11 trying to prove. I thought about it a little bit more. I  
12 didn't want that left at the side-bar. It included everyone  
13 in this case. The government put it on the record when they  
14 produced those Playboy invoices. But the idea that you were  
15 surprised to learn the government's claiming that some  
16 portions of the fund's investment was diverted to purposes of  
17 the Playboy Enterprise. That certainly wasn't a surprise to  
18 me. And I don't know why you suggest it was a surprise to  
19 you. But I went back and looked at the government's letter to  
20 you before the trial. They specifically identified that as  
21 one of the diversions. It may even be in the bail  
22 application. I remember that part of the case.

23 MR. LaRUSSO: I was trying to articulate --  
24 candidly, Judge, sometimes I'm not as clear as I should be the  
25 last couple of days. My recollection was that the invoices

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1 you're talking about Tommy Constantine Management Group. My  
2 concern was that the government was alleging that Eufora  
3 monies, because I don't believe it was the Global Settlement,  
4 were somehow getting into Constantine Management, and then  
5 Constantine Management was then paying off these invoices. So  
6 therefore, it would be a fraud. And that's what their offer  
7 of proof was, as far as I was concerned, and I couldn't  
8 question it.

9 But right now I don't have any evidence, Judge. And  
10 again, I may be wrong that any Eufora monies went to  
11 Constantine Management Group. That's where I was making my  
12 objection. I'm sorry I didn't make it clearer, Judge. That's  
13 where it is.

14 THE COURT: Okay.

15 MS. KOMATIREDDY: Your Honor, I'm happy to clarify  
16 for the purposes of going forward. If the defense takes a  
17 look at the Bank of America records for Constantine Management  
18 Group produced January 21st, 2014. During the time period of  
19 the Eufora fraud, as charged in the indictment, February to  
20 July 2009, there are multiple entries for PEII, which stands  
21 for Playboy Enterprises International, Inc.. Those are the  
22 alleged diversions.

23 THE COURT: All right. And the last thing is --  
24 and, Mr. Haley, I know you've been so focused on the trial,  
25 this hasn't come up in a while, but I said I would revisit

1 this issue. I was a little concerned about doing it before  
2 trial on Thursday, but I did say that once the government had  
3 run their search terms through the computer, that under the  
4 Second Circuit case law, that they should return the computer  
5 to Mr. Kenner.

6 So I want the government to explain to me why, at  
7 this point in the case, where we are now, I assume you  
8 completed your search of his computer. Obviously, I don't  
9 think there are any authentication issues at this point  
10 regarding the documents and their signatures in the trial.  
11 Why, at least the original of the computer -- and I think the  
12 case law would require you to retain a mirror image of the  
13 computer of non-pertinent photos and other files that are on  
14 the mirror image as well, why that shouldn't be done at this  
15 point in time.

16 MR. MISKIEWICZ: Judge, I don't think we'd have an  
17 objection to pertinent, non-pertinent materials at this time.  
18 I can perhaps offer to discuss this with Mr. Haley and see if  
19 there's some stipulation that we can enter into regarding --  
20 first of all, I will tell the Court we are no longer  
21 searching. The search is over. Obviously it's time to start  
22 proffering anything that hasn't already been disclosed and  
23 discovered.

24 As far as returning the actual laptop, Your Honor, I  
25 think our position remains the same. That it's a tangible

1 piece of evidence. It is where pertinent, relevant documents  
2 reside in their original format. We will have testimony in  
3 the next two weeks from FBI forensic examiners who will say  
4 certain documents that will be offered in evidence, and some  
5 of them are very large and have been identified, resided only  
6 on that laptop.

7 That's critical, because one of those things --  
8 among those things were the lines of credit statements that  
9 did not go to the victims. And to juxtapose that, the  
10 existence of those lines of credit statement in Mr. Kenner's  
11 laptop, against things, for instance, the consensual  
12 recordings where he says I don't have it, it's all gone, is  
13 very important. And it's important, I believe, for the entire  
14 process to preserve the integrity of the evidence that resides  
15 in that tangible item, the laptop, certainly at least through  
16 the conclusion of the trial.

17 I mean, I understand that either this government  
18 team or any other government team could go back and prevail  
19 and try to seek new evidence out of that. That would be a  
20 general warrant, as the opinion suggested.

21 THE COURT: I'll go back and read it again. I  
22 didn't understand that opinion to say that notwithstanding the  
23 fact the government can go back into the computer and do  
24 another search whenever it feels like, that it still should be  
25 able to retain the original computer as a tangible piece of

1 evidence. I thought it suggested the opposite. I thought it  
2 suggested that the government should mirror image it, or do  
3 what it needed to do to preserve the integrity of the  
4 evidence. But I didn't -- I didn't read that opinion to say  
5 that the government can hold the physical computer.

6 A lot of times the FBI doesn't even take the  
7 physical computer. They go in, they mirror image it in the  
8 home or office, and leave the original computer because  
9 they're so confident of their ability to authenticate the  
10 computer through the mirror image.

11 I understand what you're saying. I understand how  
12 important the evidence is. But if you have the mirror image  
13 of the relevant documents, I don't see what you're concerned  
14 about this. Maybe I missed something. Maybe Mr. Haley missed  
15 some notes of what documents you're referring to.

16 Are you contesting whether or not those documents  
17 were, in fact, on that computer, Mr. Haley?

18 MR. HALEY: No, sir.

19 THE COURT: So they're not going to say that wasn't  
20 on the computer, the government got those from somewhere else.  
21 So I'm not sure what the basis would be. But we can talk  
22 about it more on Monday. I don't want this to go endlessly  
23 because the government is done searching the computer. We're  
24 in trial. There is an issue about returning the computer.

25 On Monday, I want you to -- and we'll go back on

1 this -- your position is that you can hold the original. You  
2 need to explain to me your possession. Show me where it says  
3 that the government should be able to do that from a second  
4 circuit decision. All right?

5 MR. MISKIEWICZ: Will do.

6 MR. HALEY: Your Honor.

7 THE COURT: Hold on one second.

8 My law clerk reminded the phone too, which is the  
9 same issue.

10 MR. HALEY: Your Honor, the only reason I'm bring  
11 this up now is I think we have some time. I did endeavor to  
12 offer Kenner Exhibit 62 in evidence. That's a May 1, 2006  
13 from Eufora LLC to Owen Nolan, with his address. I don't know  
14 if the government's taking a firm position yet, but they would  
15 not consent to stipulate it to admitting it by way of  
16 stipulation.

17 And I agree, Judge, I did not approach the  
18 government previous to that. I assumed it would be no  
19 problem. It was an assumption on my part that I shouldn't  
20 have taken. As an offer of proof, Judge, the value of this  
21 document, from the defense perspective, is quite significant.  
22 This witness clearly testified that at no point authorized his  
23 line of credit to the tune of 2.2 million to be accessed by  
24 Little Isle IV for the purposes of the Hawaii Land Development  
25 Investment. We have a K-1 in 2006 coming out of Little Isle

1 IV, to Owen Nolan, reflecting the capital contributed during  
2 the year, \$2,300,000.

3 So you have the \$100,000 original investment. You  
4 have a \$2.2 million original investment. You then, of course,  
5 have distribution in the amount of \$761,458. Judge, it says  
6 records maintained by the IRS. My point, really, is quite  
7 simple. If it's part of the government's theory that Phil  
8 Kenner accessed these lines of credit without authorization,  
9 he's a pretty inept criminal. What I mean by that is, in 2006  
10 he generates -- Little Isle IV generates a K1 that reflects  
11 just that.

12 We believe, and the offer of proof would be that it  
13 was sent to the accountants for the purposes of completing  
14 their tax returns in that year. I believe this is a document.

15 THE COURT: You said the accountants?

16 MR. HALEY: I misspoke. The Nolans. We believe  
17 that a search of their tax records would reveal the  
18 information contained on this K1.

19 THE COURT: But that wasn't produced to you by the  
20 government. The government didn't provide you with that. You  
21 got that from your own --

22 MR. MISKIEWICZ: Your Honor, we did provide it,  
23 again, as one of the records that came from the search of  
24 Mr. Kenner's house. So the only place we know it lives is in  
25 the defendant's own home and records. We have no information

1 that this information ever either got to Mr. Nolan or was  
2 filed with his return to the IRS. So the basis of our  
3 objection was just that, it's a document created by the  
4 defendant.

5 THE COURT: Why don't you ask Mr. Nolan -- what year  
6 was that?

7 MR. HALEY: 2006, Judge.

8 THE COURT: You can ask Mr. Nolan if he or his  
9 accountant or wife retained a copy of the tax return for that  
10 year, and see whether or not they have a copy of it.

11 MR. HALEY: Sure, Judge. My only concern is if it  
12 comes from Mr. Nolan, if the government asks Mr. Nolan that  
13 question, I predict his answer will be I don't recall.

14 THE COURT: We're not going to tell him does he  
15 recall. We're going to tell him that he can contact his  
16 accountant and/or his wife and get his return for 2006, and  
17 obtain a copy of it and see if the K1 is attached to the  
18 return. That doesn't come out of his memory. I guess he can  
19 say he doesn't have that documentation. Then we'll deal with  
20 that when he says that.

21 Do you have any problem with that?

22 MR. MISKIEWICZ: No, that would solve the problem.

23 MR. HALEY: If I may, Judge --

24 THE COURT: Is it actually attached to the tax  
25 return?



1 MR. HALEY: I don't know that a K1 is attached to  
2 the tax return, Judge. But when you receive a K1, it would  
3 have to be reflected -- I forget the schedule on the tax  
4 returns. The K1 information would have to be reflected on the  
5 tax return.

6 THE COURT: So clarify if he has a copy of his  
7 return. Whoever prepared it, it his accountant or his wife,  
8 see whether or not in connection with the tax return they had  
9 a K-1. Okay?

10 MR. MISKIEWICZ: Yes.

11 MR. HALEY: All right. Judge, the search -- in  
12 order to make -- it would have been filed in 2007. Maybe I  
13 need, depending when it was sent out -- my point is simply  
14 this, Judge. I think to cover the issue we're going to look  
15 at tax records from 2006 through 2008.

16 THE COURT: Okay. Any K1s they have for 2006 to  
17 2008.

18 MR. HALEY: Sure. Thank you, Judge.

19 MR. MISKIEWICZ: Fine.

20 THE COURT: The K1s.

21 MR. LaRUSSO: Going back. I don't want to belabor  
22 the point. I'd ask the Court's permission, we don't disagree  
23 with Ms. Komatireddy's representation to the Court that there  
24 are, from Constantine Management Group, monies going to  
25 Playboy Enterprises. We concede that. It's in the record.

1 What we're saying is that the monies from Eufora to  
2 Constantine Management Group are not there. So the payment by  
3 Constantine Management Group to Playboy is not relevant to the  
4 fraud. With your permission, we'll put it in a letter so we  
5 can maybe articulate a little better what it is.

6 THE COURT: How can you say it's not relevant to the  
7 fraud? If people who are investing in Eufora, if their money  
8 went to Constantine Management Group.

9 MR. LaRUSSO: Then I have no problem.

10 THE COURT: I think we've heard evidence, I believe,  
11 that people who thought they were investing in Eufora wired  
12 mire to Constantine Management Group. So to the extent you're  
13 arguing that well, Constantine Management Group is not Eufora,  
14 there is at least some evidence in the record to suggest  
15 that's what people who were investing in Eufora, that's where  
16 their money went.

17 MR. LaRUSSO: As far as --

18 THE COURT: It's all part of it.

19 MR. HALEY: I have a different position on that,  
20 Your Honor, but I'll articulate that at the appropriate time.

21 THE COURT: I'm sure there's more than one position  
22 on that, but that's why, at a minimum, it's relevant. But  
23 it's not the only explanation for it.

24 All right. So have a good weekend. I'll see you  
25 Monday at 9:30.

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1 MR. MISKIEWICZ: Thank you.

2 MR. HALEY: Thank you, Your Honor.

3 MR. LaRUSSO: Thank you, Your Honor.

4 (Matter adjourned to Monday, June 1, 2015, at 9:30

5 a.m.)

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TYSON NASH 1941  
DIRECT EXAMINATION (CONT'D) 1941  
BY MS. KOMATIREDDY  
CROSS-EXAMINATION 1945  
BY MR. HALEY  
CROSS-EXAMINATION 1982  
BY MR. LARUSSO  
REDIRECT EXAMINATION 2033  
BY MS. KOMATIREDDY  
RECROSS EXAMINATION 2043  
BY MR. HALEY  
RECROSS EXAMINATION 2044  
BY MR. LARUSSO:  
  
OWEN NOLAN 2049  
DIRECT EXAMINATION 2050  
BY MR. MISKIEWICZ  
CROSS-EXAMINATION 2079  
BY MR. HALEY  
CROSS EXAMINATION 2117  
BY MR. LARUSSO  
REDIRECT EXAMINATION 2126  
BY MR. MISKIEWICZ

E X H I B I T S

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|---|------|
| GOVERNMENT EXHIBIT 764 WAS RECEIVED IN EVIDENCE       | 1943 |
| GOVERNMENT EXHIBIT 2154 WAS RECEIVED IN EVIDENCE      | 2067 |
| DEFENDANT'S EXHIBIT 52 WAS RECEIVED IN EVIDENCE       | 1960 |
| DEFENSE EXHIBIT C122 IN EVIDENCE                      | 1986 |
| DEFENDANT'S EXHIBIT C-50                              | 2028 |
| DEFENDANT EXHIBIT C-123                               | 2031 |
| DEFENDANT'S KENNER EXHIBIT 4 WAS RECEIVED IN EVIDENCE | 2079 |

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| \$   | '08 [1] - 2051:1   |   |  |  |
|--|--|---|--|--|
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